

(1977) 03 GUJ CK 0009

In the Gujarat High Court

Case No : Income-tax Reference No's. 54 of 1975 and 107 of 1976

Commissioner of Income Tax, Gujarat-I

APPELLANT

Vs

Satellite Engineering Ltd.

RESPONDENT

Date of Decision : 21-03-1977

Acts Referred:

Income Tax (Amendment) Act, 1961 — Section 84
Income Tax Act, 1922 — Section 15C

Citation : (1978) 113 ITR 208

Hon'ble Judges : P.D. Desai, J;J.B. Mehta, J

Bench : Division Bench

Advocate : G.N. Desai, for the Appellant; J.P. Shah, for the Respondent

Judgement

P.D. Desai, J.—These two references, both at the instance of the Commissioner of Income Tax, arise out of a common order of the Income

Tax Appellate Tribunal in two appeals and they have been heard together and can be conveniently disposed of by a common judgment.

2. The assessment years involved in these two references are assessment years 1966-67 and 1967-68. The relevant previous years are financial

years ending March 31, 1966, and March 31, 1967, respectively.

3. The assessee, a public limited company, was incorporated on April 12, 1962, for carrying on business as manufacturers of starters and switches

used in fluorescent lamps. It appears that for the purpose of housing its manufactory, the assessee purchased land and building from M/s.

Equatorial Pvt. Ltd. for a consideration of Rs. 1,49,390. The assessee also purchased from M/s. Parmanand Maneklal Pvt. Ltd. previously used

plant and machinery together with licences, stock-in-trade, etc., under an agreement dated April 16, 1962, for a total consideration of Rs. 65,588.

The assessee started its manufacturing activity on June 1, 1962, with the aid of the machinery so purchased.

4. It appears that the assessee, after starting its manufacturing activity, purchased a fully automatic Swiss lathe and also an extrusion press from

Germany for manufacture of brass pins and aluminium containers. A fully automatic vacuum machine was also installed to increase the output of

fluorescent starters and switches with minimum wastage of labour.

5. Having regard to the new machinery purchased and installed as aforesaid, the assessee for the first time claimed the relief of tax-holiday u/s 84

of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in the course of proceedings for its assessment to Income Tax for the aforesaid

two assessment years. The main contention of the assessee was that having regard to the acquisition and installation of new machinery, the

provisions of section 84(2)(ii) read with the Explanation to sub-section (3) were satisfied in the years of account and that as such it became entitled

to the relief which was available to newly established industrial undertakings as from the said years. In the alternative, the assessee contended that

though its factory commenced production on and with effect from June 1, 1962, in substance and reality the manufacturing activity could not be

said to have been started in the said year inasmuch as all the component parts required for the manufacture of switches were not produced in its

factory till the new machinery was installed and that, therefore, for the purpose of the relief u/s 84, the first year of formation of the new

undertaking should be considered to be the year in which the assessee set up the entire unit along with the new machinery.

6. The Income Tax Officer rejected both the contentions of the assessee. He held that it was with reference to the first year of manufacture that the

question of applicability of section 84 was required to be considered. The assessee's factory started production on June 1, 1962, and the

conditions for the applicability of the said provision were not satisfied in the said year as the factory of the assessee was then formed by the old

machinery acquired from M/s. Parmanand Maneklal Pvt. Ltd. The benefit of section 84 cannot, therefore, be claimed in the subsequent years. The

assessee could not also be said to have formed the new industrial undertaking in the subsequent year of account when it acquired additional

machinery inasmuch as ""the overall purpose of the company commencing industrial undertaking was the manufacture of switches and the

manufacture of components at an initial stage in the manufacturing programme of the assessee was a part of the industrial undertaking itself"". The

assessee must, therefore, be held to have set up the undertaking when it commenced production on June 1, 1962. In view of these findings, the

relief u/s 84 was not granted to the assessee in respect of both the assessment years.

7. The assessee, feeling aggrieved by the decision of the Income Tax Officer, carried the matter in appeal. The Appellate Assistant Commissioner

upheld the decision of the Income Tax Officer and dismissed the appeals.

8. The assessee carried the matter in further appeal to the Income Tax Appellate Tribunal. The Tribunal found that :

(i) the machinery purchased from M/s. Parmanand Maneklal Pvt. Ltd. was used by the said company before its transfer to the assessee;

(ii) the land and building purchased by the assessee from M/s. Equitorial Pvt. Ltd. were, however, not used by the transferor-company prior to

their transfer to the assessee;

(iii) in the year in which the assessee started its manufacturing activity, that is to say, in the year 1962, the assessee was not entitled to claim benefit

u/s 84 inasmuch as the value of the previously used transferred asset exceeded the statutory percentage;

(iv) in the years of assessment, however, the assessee fulfilled the conditions laid down in section 84(2)(ii) read with the Explanation to sub-section

(3) inasmuch as the total value of the transferred machinery in those years fell below the statutory percentage and the assessee was, therefore,

entitled to such relief;

(v) the assessee's alternative contention that it must be taken to have started its manufacturing activity for the first time during the year of account

and that it was entitled to relief u/s 84 on that basis was not acceptable because the evidence on record clearly established that the manufacturing

activity really commenced in the year 1962; and

(vi) the matter was required to be remitted back to the Income Tax Officer with the direction that the relief due to the assessee should be

computed bearing in mind the observations made in the order of the Tribunal and

the decision of the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Elecon Engineering Co. Ltd., .

9. In view of the aforesaid findings, the appeal was allowed to the extent of grant of relief u/s 84 in the two assessment years in question.

10. The revenue was aggrieved by the decision of the Tribunal and it made two separate applications in respect of two different years of

assessment requiring the Tribunal to refer to this court u/s 256(1) of the Act two questions of law arising out of its orders, namely, (i) whether the

assessee was entitled to relief u/s 84 for the two assessment years, and (2) whether the Tribunal was right in the law in remitting the matter back to

the Income Tax Officer for recomputation of the relief. The Tribunal granted the application in so far as the second of the above mentioned

questions is concerned and it accordingly referred to this court the following question which is the subject-matter of Income Tax Reference No. 54

of 1975.

Whether, the Tribunal was right in law in remitting the matter back to the Income Tax Officer for recomputation of the relief after taking into

account the observations of the Tribunal and the decision of the Gujarat High Court in I.T. Reference No. 19 of 1971 Commissioner of Income

Tax, Gujarat II Vs. Elecon Engineering Co. Ltd., decided on 11/12th September, 1973 ?

11. As regards the first question, however, the Tribunal held that it was purely a question of fact and that, therefore, no reference was called for.

12. The revenue thereupon made two separate applications to this court u/s 256(2) praying that the Tribunal should be required to refer to this

court the first question indicated earlier. This court granted those applications and accordingly the Tribunal has stated a case in respect of the

following question which is the subject-matter of ITR No. 107 of 1976 :

Whether the assessee was entitled to relief u/s 84 of the Income Tax Act, 1961, for the assessment years 1966-67 and 1967-68 ?"" It appears to

us that the question referred to this court in Income Tax Reference No. 107 of 1976 is the principal question and we will, therefore, proceed to

consider the said question in the first instance.

13. Let us first read the relevant parts of section 84 as it stood at the material time :

84. Income of newly established industrial undertakings or hotels-(1) Save as otherwise hereinafter provided, Income Tax shall not be payable by

an assessee on so much of the profits and gains derived from any industrial undertaking or business of a hotel or from any ship, to which this

section applies, as does not exceed six per cent. per annum on the capital employed in such undertaking or business or ship, computed in the

prescribed manner.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely :-...

(ii) it is not formed by the transfer to a new business of a building machinery or plant previously used for an purpose;

(iii) it manufactures or produces articles or operates one or more cold storage plants, in any part of India, and has begun or begins to manufacture

or produce articles or to operate such plant or plants, at any time within the period of twenty-three years next following the April 1, 1948, or such

further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial

undertaking;...

Provided further that the condition in clause (ii) shall be deemed not to have been contravened if the industrial undertaking is set up in rented

premises.....

Explanation-where -

(a) in the case of an industrial undertaking, any building, machinery or plant, or any part thereof, previously used for any purpose, or.....

is, in either case, transferred to a new business, and the total value of the building, machinery or plant or part so transferred does not exceed

twenty per cent. of the total value of the building, machinery or plant used in the business, then, for the purposes of clause (ii) of sub-section (2)

and clause (a) of sub-section (3), the condition specified therein shall be deemed to have been complied with and the total value of the building,

machinery or plant or part so transferred shall not be taken into account in computing the capital employed in the industrial undertaking or the

business of the hotel.....

(7) The provisions of this section shall, in relation to an industrial undertaking, apply to the assessment -

(i) for the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or, as the case may be,

operate the cold storage plant or plants, and

(ii) where the assessee is a co-operative society, for the six assessment years immediately succeeding, and where the assessee is any other person,

for the four assessment years immediately succeeding...

14. It might be clarified at this stage that the provisions quoted above were applicable to the assessment year 1967-68, which is one of the

assessment years with which we are concerned in these references. So far as the assessment year 1966-67 is concerned, which is the other year

involved in these references, the only material distinction in the statutory provisions then applicable is that the two provisions at the end of sub-

section (2) were not on the statute book and that the Explanation to sub-section (3) read, at the material time, as follows :

Explanation-Where any building, machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the

total value of the building, machinery or plant part so transferred does not exceed twenty per cent. of the total value of the building, machinery or

plant used in the business, then, for the purposes of clause (ii) of sub-section (2) and clause (a) of sub-section (3), the industrial undertaking or

hotel to which the transfer has been made shall be deemed to have complied with the condition specified therein and the total value of the building,

machinery or plant or part so transferred shall not be taken into account in computing the capital employed in the industrial undertaking or hotel.

15. We have made this position clear only with a view to citing the correct provisions. So far as the point involved in these references is concerned,

however, the change in the statutory scheme or language makes no difference because the material provisions, namely, clause (ii) of sub-section (2)

and the Explanation to sub-section (3) have, for all intents and purposes, retained their verbal structure.

16. In order to appreciate the true legal effect of this provision, it would be necessary to refer first to the legislative history. A provision

substantially similar to section 84, which offers tax incentive in the form of fractional exemption from tax on profits of a newly established

undertaking for five assessment years was, for the first time, introduced in the

Indian Income Tax Act, 1922, by section 13 of the Taxation Laws

(Extension to Merged States and Amendment) Act, 1949. It was section 15C. The benefit of the said section was extended to the actual

manufacture or production of articles commencing from a prior date, namely, April 1, 1948, and initially the relief could only be claimed by an

industrial undertaking which had begun or begins to manufacture produce articles of any time within a period of three years from the said date.

This time limit was progressively raised from time to time from 3 years in 1949 to 6 years in 1953, 7 years in 1954, 13 years in 1956 and 18 years

in 1960. When the new Act was enacted in 1961, section 15C was replaced by section 84. In the Act so enacted, the time limit of eighteen years

was maintained. However, by an amendment enacted by Finance (No. 2) Act, 1965, the said time limit was raised to 23 years. By section 33 of,

and the Third Schedule to, the Finance (No. 2) Act, 1967, section 84 was omitted on and with effect from April 1, 1968, and in its place section

80J was enacted in Chapter VIA to provide a substantially similar relief. By the Finance Act, 1969, the time-limit of 23 years in section 80J(4)(iii)

was increased to 28 years and by the Finance Act, 1975, it was raised to 33 years. This is how the provisions stand at the present date.

17. In *Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal*, , the Supreme Court had an

occasion to construe the provisions of the old section 15C. After referring to the legislative history, it was observed at page 202 :

The incentive introduced in 1949 has been thus stepped up ever since and the only object is that which we have already mentioned.

18. It becomes relevant, therefore, to ascertain the object behind the enactment of section 84 and the statutory provisions which preceded and

succeeded it. It hardly needs to be stated that it is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily

be understood in a sense in which they best harmonise with the object of the statute and which effectuate the object of the the legislature. In

interpreting a statute the court cannot ignore its aim and object. (See *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, .

19. Now, the legislative intent behind the enactment of this provision was to provide what is conveniently and aptly called a ""tax holiday"" to a newly

established industrial undertaking. The section is an exemption section and it grants certain partial benefit so far as the profits of a new industrial

undertaking are concerned for a limited period. The principal object of the provision, as observed in *Textile Machinery Corporation Limited*,

Calcutta Vs. The Commissioner of Income Tax, West Bengal, is to encourage setting up of new industrial undertakings by offering tax incentives.

After the country gained independence in 1947, it was most essential to give fillip to trade and industry from all quarters and this seems to be the

background for the enactment of old section 15C and its continuance in the statute book in one form or the other thereafter till this date with

progressive amendments made from time to time with a view to extending its benefit for a longer period. Be it noted, in this connection, that not

only has the legislature extended the time limit from time to time, but it has also made at least two further concessions in favour of new industrial

undertakings since its initial enactment; first, from clause (ii) of sub-section (4) of section 80J, which as initially enacted was in pari materia with

clause (ii) of sub-section (2) of section 84, the words "a building (not being a building taken on rent or lease), have been omitted by the Finance

Act, 1975, with effect from April 1, 1976, and, secondly, a provision for carrying forward has been made in sub-section (3) of section 80J. It

would thus appear that the legislature has been progressively relaxing the provisions relating to earning of tax benefits by new industrial

undertakings, the end in view being to encourage the setting up of new industries by substantial investment of new capital. Any interpretation of

such provision must, therefore, be in consonance with this avowed aim and object of the legislature and not such as would defeat the same.

20. Against this background, let us proceed to construe the relevant provision. We are principally concerned in these references with clause (ii) of

sub-section (2) of section 84 which enacts that the section applies to any industrial undertaking which is "not formed by the transfer to a new

business of a building, machinery or plant previously used for any purpose. "In order to appreciate its true effect, however, we will have to

consider the other connected provisions of the section. As the title of the section suggests, it makes provision in respect of the income of newly

established industrial undertakings or hotels. Under sub-section (1), save as otherwise provided Income Tax is not payable by an assessee on

products and gains not exceeding 6% per annum on the capital employed in any industrial undertaking, or business of a hotel, or from any ship. We

are concerned in this case with an industrial undertaking and we shall, therefore, in the course of our discussion refer only to an industrial

undertaking and not to other income producing units mentioned in the various parts of the section. This sub-section speaks of "any industrial

undertaking". It does not specifically refer to a new industrial undertaking. However, it is sub-section (2) which projects that concept. The said

sub-section lays down certain negative as well as positive conditions for claiming the benefit of tax holiday. As observed by the Supreme Court in

Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal, , the said sub-section negatively provides

that an industrial undertaking, in order to earn benefit of sub-section (1), should not be formed : (i) by the splitting up of a business already in

existence; (ii) by reconstruction of a business already in existence; or (iii) by the transfer to a new business of building, machinery or plant

previously used for any purpose. Positively, the said sub-section provides that the industrial undertaking must produce result, that is to say, it must

manufacture or produce articles at any time within a period of 23 years next following the first of April, 1948, or such further period as the Central

Government may by notification in the official Gazette specify with reference to any particular industrial undertaking. The further positive

requirement under sub-section (2) is with regard to the personnel employed in the undertaking, namely, that ten or more workers have to work in

manufacturing process carried on with the aid of power or twenty or more workers must carry on work in a manufacturing process carried on

without the aid of power. This provision shows that even small industrial undertakings, newly started, are within the exemption clause. The first

proviso to sub-section (2) relaxes the second negative condition mentioned above in certain circumstances. The second proviso enacts that the

third negative condition mentioned above shall not be deemed to have been contravened if the industrial undertaking is set up in rented premises.

21. Now, let us concentrate on the provision with which we are immediately concerned in these references. As stated earlier, clause (ii) of sub-

section (2) provides that the industrial undertaking should not be formed by "the transfer to a new business of a building, machinery or plant

previously used for any purpose." The building, machinery or plant of a new business maybe acquired by transfer of a new asset of such nature or

it may be acquired by purchase or exchange or gift or relinquishment or extinguishment of any right in an asset of such nature which is previously

used in any business. In the latter case, the business would be new only apparently but not in reality. This provision was introduced in order to

ensure that a new industrial undertaking is in substance and reality so and that it is not apparently new but substantially the same old existing

business. In *Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal*, , the Supreme Court observed

at page 203 :

Even if a new business is carried on but by piercing the veil of the new business it is found that there is employment of the assets of the old

business, the benefit will not be available. From this it clearly follows that substantial investment of new capital is imperative... There must be a new

undertaking where substantial investment of fresh capital must be made in order to enable earning of profits attributable to that new capital.

22. The legislature, with the said end in view, excluded from the net of tax exemption an industrial undertaking, the tools of trade of which, prior to

their transfer, were used for any purpose. However, this provision, standing by itself, as it did in section 15C of the old Act, was capable of a strict

construction which would have denied the benefit of tax holiday to an industrial undertaking which was otherwise new but which employed in the

new business even a small fraction of previously used building, machinery or plant transferred to it. On the other hand, it was also capable of being

construed very liberally in favour of the assessee by holding that the taxing authority should take into account the value of the transferred asset vis-

a-vis the total cost involved in the setting up of the new industrial undertaking and the benefit of tax holiday should be denied to such undertaking,

only if it finds that the value of such transferred asset does not bear reasonable proportion to the total cost of the formation of the new industrial

undertaking. In fact, in *WEBBING AND BELTING FACTORY PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, NEW DELHI.*, ,

the Punjab High Court took the view on the plain terms of clause (ii) of sub-section (2) of section 15C that a provision of that kind, which was

intended to encourage the setting up of new industrial enterprises, must be construed liberally and on that view of the matter, the opening of the

factory in that case was held to be a new enterprise although about 35% of the machinery or plant used in the factory was previously used. It

appears that it was for the reason presumably for avoiding uncertainty that the legislature intervened when it enacted the Explanation to sub-section

(3) pursuant to the report of the Select Committee which considered the bill that later became the 1961 Act. The Select Committee had

recommended in its report that where a minor part, not exceeding 20% of the assets of a new industrial undertaking, consisted of secondhand

items, the benefit of tax holiday should not be denied in toto but that in computing the capital employed, the value of such assets should be

excluded. The Explanation, in substance, provides that when such previously used building, machinery or plant or any part thereof is transferred to

a new business and the total value of the asset so transferred does not exceed 20% of the total value of the building, machinery or plant used in the

business, the industrial undertaking to which such transfer has been made shall be deemed to have complied with the conditions specified in clause

(ii) of sub-section (2) and clause (a) of sub-section (3). However, the total value of such transferred asset shall not be taken into account in

computing the capital employed in the industrial undertaking. The legislature has thus introduced an objective standard based on percentage of the

total value of the previously used transferred asset vis-a-vis the total value of the asset employed in the business and thereby removed the

uncertainty, if any, in the original provision.

23. When clause (ii) of sub-section (2) is read with the Explanation to sub-section (3), the position which emerges is this. The industrial

undertaking should not have been formed by the transfer to a new business of a building, machinery or plant previously used for any purpose.

However, if the total value of such previously used building, machinery or plant or part thereof transferred to the new business does not exceed

20% of the total value of the building, machinery or plant used in the business, then the condition laid down in clause (ii) of sub-section (2) shall be

deemed to have been complied with and the tax holiday will be available to such industrial undertaking, though, for the purposes of computing the

capital employed in such industrial undertaking, the total value of the building, machinery or plant or part thereof so transferred shall not be taken into account.

24. Next, we must turn to sub-section (7) which lays down the formula for computing the period during which the benefit of tax holiday is to be

availed of by a newly established industrial undertaking. It prescribes the starting and terminal points for the availing of the benefit. The said sub-

section, as it stood at the material time, provided in substance that the provisions of the section were to apply to the assessment for the assessment

year relevant to the previous year in which the industrial undertaking began to manufacture or produce articles and that it was to be available for

the immediately succeeding four assessment years in case the assessee is a person other than a co-operative society and, in the case of a co-

operative society, for the six assessment years immediately succeeding. The scheme, therefore, was to make available the benefit of tax holiday for

a period of five consecutive years, the commencing point of such period being the assessment year relevant to the previous year in which the

industrial undertaking begins to manufacture or produce articles.

25. Bearing in mind these provisions, let us proceed to consider the submissions made on behalf of the revenue before us. It was urged, in the first

place, that on a true construction of section 84(2)(ii) read with the Explanation to sub-section (3) and sub-section (7), the taxing authority was

required to determine whether in the year of its formation, that is say, coming into existence by incorporation or otherwise, the newly established

industrial undertaking satisfied the conditions for the applicability of the provisions of section 84. Alternatively, it was urged that the latest point of

time by reference to which the applicability could be ascertained was the date of the commencement of manufacture or production by such

undertaking. The submission was that if the condition prescribed in section 84(2)(ii) was satisfied either in the year of formation or latest in the year

of commencement of manufacture or production by the new business then, the tax holiday would be available in the assessment year relevant to the

previous year in which the manufacture started and in the immediately four succeeding assessment years. If, however, the condition was not

satisfied in any of those two years, then, the benefit of tax holiday would not be

available, even if by subsequent addition of an entirely new building, machinery or plant or part thereof in the course of any of the succeeding four years, the total value of the previously used building, machinery or plant, still in the employment of the new undertaking, fell below the statutory percentage. The submission in other words was that the condition for earning tax holiday was inextricably linked up with the previous year relevant to the assessment year in which the new undertaking was formed or it began to manufacture or produce articles, that its satisfaction or otherwise had to be considered at that point of time alone and that if it was not so satisfied, the benefit could not be claimed in the succeeding four years, irrespective of any addition during the said period of new building, machinery or plant which has the effect of substantially altering the proportion of the new and old assets. The question is whether this submission is well-founded,

26. Now, so far as the first prong of this submission is concerned, it has been stated merely to be rejected. It misconstrues the word "formed" and

mixes up the concept of bringing into existence of an industrial undertaking under the Companies Act or any other appropriate law and the concept of formation of such undertaking by transfer to its new business of previously used building, machinery or plant within the meaning of section 84(2)

(ii). The two concepts are distinct and separate and the two things which they represent may not necessarily co-exist at the same point of time. For

the purposes of section 84(2)(ii) all that is to be seen is whether the manufacturing or productive apparatus of a newly established industrial

undertaking or, in the case of a pre-existing industrial undertaking, that of its new business, is formed of, that is to say, consists of previously used

building, machinery or plant transferred to such new undertaking or business. The point of time for the applicability of section 84 is prescribed in

sub-section (7) and, accordingly, in relation to a new industrial undertaking, the said section is first attracted in the assessment year relevant to the

previous year in which the undertaking begins to manufacture or produce articles. Therefore, it is in the course of assessment to Income Tax for

such assessment year that the taxing authority will have to consider for the first time whether the new industrial undertaking was, during the relevant

previous year, formed by transfer of building, machinery or plant which were

previously used for any purpose, and, if so, whether the condition as to statutory percentage prescribed in the proviso to sub-section (3) was satisfied. A new business, at the stage of its coming into existence and long before the manufacture or production commences, might have acquired or be possessed of previously used building, plant or machinery which might constitute but a fraction of the entire building, plant or machinery which it requires in order to start manufacture or production. By the time the stage of manufacture or production arrives, however, it might acquire and instal new plant or machinery of substantial value and in that manner, the whole manufacturing unit might be set up at a subsequent stage, that is to say, not in the year of birth but in the year of commencement of manufacture in production. Could it ever be said in a such case, in spite of the clear terms of sub-section (7) read with clause (ii) of sub-section (2) and the Explanation to sub-section (3) that the benefit of tax holiday would not be available to such new industrial undertaking ? In our opinion, therefore, the first submission must be rejected outright.

27. The alternative submission, in our opinion, proceeds upon an assumption which is not warranted by the language of the relevant statutory provisions. As explained earlier, the scheme of the statute is to make available the benefit of tax holiday for a period of consecutive years, the commencement point of such period being the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles. According to this scheme, there are two limitations on the claim of a new industrial undertaking to the benefit of tax holiday : first, that the benefit will be available for a total period of five consecutive years only and, secondly, that the starting point of such period would be the year in which the manufacture or production of the article begins. We find nothing in the language of the relevant statutory provisions which, however, imposes a further limitation, namely, that if the condition laid down in section 84(2)(ii) is not satisfied in the very year of commencement of manufacture or production, the benefit of tax holiday will not be available, even if such condition is satisfied in the course of any of the subsequent four years. It cannot be overlooked in this connection that the profits and gains derived from business are assessable in each assessment year. Therefore, in each assessment year falling within the five-year

period, the question will arise whether the new industrial undertaking, which claims the benefit of tax holiday, satisfies the conditions laid down in clause (ii) of sub-section (2). In other words, according to the legislative scheme, it is apparent that in each assessment year commencing from the assessment year relevant to the previous year in which such new industrial undertaking begins manufacture or production the taxing authority will have to consider whether the industrial undertaking was formed by the transfer to its new business of building, machinery or plant previously used for any purpose, and, if so, whether the total value of such transferred asset exceeded 20% of the total value of the building, machinery or plant used in the business of such undertaking during the relevant year. If the new industrial undertaking which has not satisfied such test in any of the earlier assessment years comprised in the five year period, acquires new building, machinery or plant during anyone of the succeeding assessment years and as a result of such acquisition the condition prescribed in clause (ii) of sub-section (2) is fulfilled, then, as from the assessment year in which such condition is satisfied, the benefit of tax holiday will be available to it for the remaining period of the five-year term. This appears to us to be the only reasonable construction possible having regard to the plain words of the statutory enactment.

28. The view which we are inclined to take as aforesaid on the plain language of the statute is supported also by the object behind the enactment and avoids the frustration of such object. We have already adverted to the object of the enactment, namely, to encourage the setting up of new industrial undertakings in which there is substantial investment of fresh capital. The legislature could not have intended that the outlay of substantial capital for the purpose of new machinery, plant or building should necessarily be in the very first year of the commencement of manufacture or production. In fact, there are many industrial units which add to their building, machinery or plant as the business grows and more capital becomes available. If the construction for which the revenue contends were accepted, such industrial units would be denied the benefit of tax holiday, even though they are still going through the teething trouble and are still in their infancy. Such a construction would totally nullify the object of the enactment. A converse case than the one illustrated above would, however, still

clearly show how the construction for which the revenue contends will lead to a manifest contradiction of the apparent purpose of the enactment. Take the case of an industrial undertaking which in the year in which it undertakes or begins manufacture or production, satisfies the condition enacted in section 84(2)(ii) read with the Explanation but in the immediately succeeding year adds to its manufacturing unit building, machinery or plant which has been previously used and thereby varies the ratio of the new and old assets. If the only point of time at which the condition as to the applicability of the relevant provisions has to be satisfied is when the new undertaking starts the manufacturing activity, such an industrial undertaking which subsequently adds used assets to its new business will continue to have the tax holiday for the full period of five years even though it has in fact and reality ceased to be a new industrial undertaking. Could it ever have been intended by the legislature that the benefit of tax holiday should still be available to such an industrial undertaking in all the subsequent years even though the essential condition for earning the tax holiday is not satisfied in those assessment years ? It is well settled that even if the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentences (See *Tirath Singh Vs. Bachittar Singh and Others*,). This is not a case where the meaning of the word is to be modified or the structure of the sentence is to be changed to achieve the legislative object. At the highest, this is a case where the language employed by the legislature might be capable of bearing more than one construction and, in such a case, in arriving at the true meaning, regard must be had to the fact that such construction is not adopted which defeats the very purpose for which the enactment was made. In our opinion, therefore, even the alternative submission made on behalf of the revenue must be rejected.

29. The revenue sought to reinforce its submission by invoking the aid of rule 19 of the Income Tax Rules, 1962, which provides for the computation of capital employed in an industrial undertaking for the purposes of section 84. It was stressed that under the Explanation to sub-rule

(1) of the said rule, for the purpose of clauses (a) and (b) of the said sub-rule, the value of any building, machinery or plant or any part thereof,

which having been previously used for any purpose is transferred to the undertaking or hotel at the time of its formation, shall not be taken into

account for computing the capital employed in cases to which the Explanation to section 84 applies. The submission was that the underlined words

indicated that the point of time at which the condition laid down in section 84(2) (ii) was to be satisfied was the time of formation of the industrial

undertaking and that no other or later point of time was contemplated. Now, in the first place, this submission suffers from the same fallacy which

we have indicated earlier, namely, it misconstrues the word "formation" and mixes up the concept of the legal birth of an undertaking with the

concept of its becoming a unit of production by acquisition and installation of plant and machinery. In the next place, it would not be permissible to

cut down the ambit of a section of an Act by reference to the provisions of a subordinate legislation such as rules enacted under the Act. Any piece

of subordinate legislation, which runs counter to the enacting part of the statute under which it is framed, would be ultra virus and no aid or

assistance can be had from such a piece of subordinate legislation so far as the interpretation of the enacting provision is concerned. Even rules or

regulations, which are to have effect as if enacted in the Act, do not cease to be subordinate to the principal enactment and their true nature as

subordinate rules or regulations is not lost. It could hardly be contended, therefore, that rule 19 could control the meaning of the words contained

in section 84(2)(ii) or other cognate provisions.

30. It is against this background that we must proceed to answer the question under consideration. The date of commencement of manufacture or

production of articles in the case of the assessee was June 1, 1962. The provisions of section 84 will, therefore, be attracted in its case for the first

time in the assessment year 1963-64. The benefit of tax holiday would be available to it for a consecutive period of five years thereafter on

fulfillment of the requisite conditions. In other words, if the assessee satisfies the condition (3) at any time during the five-year period

commencing from the assessment year 1963-64 and ending with the assessment year 1967-68, it could legitimately claim the relief. The

assessment years with which we are concerned herein are assessment years 1966-67 and 1967-68. In our opinion, therefore, the Tribunal was

right in the view that it took so far as the question in Income Tax Reference No. 107 of 1976 is concerned. The answer to the said question will,

therefore, have to be in the affirmative, that is to say, in favour of the assessee and against the revenue.

31. That takes us to Income Tax Reference No. 54 of 1975. It is conceded on behalf of the revenue that the controversy which is sought to be

raised by the question in the said reference is covered by the decision of this court in Commissioner of Income Tax, Gujarat II Vs. Elecon

Engineering Co. Ltd., . Following our decision in the said case, therefore, we must answer the question in the said reference also in the affirmative,

that is to say, in favour of the assessee and against the revenue.

32. The question in each of the two references stands accordingly answered in the affirmative, that is to say, in favour of the assessee and against

the revenue. The Commissioner will pay the costs of both the references to the assessee.