
(2005) 199 CTR 466 : (2005) 278 ITR 470

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 3444 of 2004

Winsome Textiles
Industries Ltd.

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Nov. 2, 2004

Acts Referred:

- Finance Act, 1990 - Section 28
- Income Tax Act, 1961 - Section 37(2A), 80, 80A(2), 80HH

Citation: (2005) 199 CTR 466 : (2005) 278 ITR 470

Hon'ble Judges: N.K. Sud, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Akshay Bhan, for the Appellant; D.S. Patwalia, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sud, J.

Challenge in this writ petition is to the validity of notice dated September 19, 2003 (annexure P-7A), u/s 148 of the Income Tax Act, 1961 (for short "the Act"), by which proceedings u/s 147 of the Act have been initiated to reassess the income for the assessment year 1997-98 which is alleged to have escaped assessment.

2. The assessee-company filed its return of income for the assessment year 1997-98 on November 21, 1997. The computation of income under the Act resulted in loss of Rs. 1,15,89,039. However, computation of income u/s 115JA was made as under :

(Rs.)

Profit as per profit and loss account	5,90,42,435
Less : Profit u/s 80-IA(2)(iv)(b) of the Act	5,71,25,919

Balance 19,16,516

30 per cent, of the book profit 5,74,955

3. Accordingly, the assessee declared income of Rs. 5,74,955 in its return. The return was processed u/s 143(1)(a) on January 29, 1998, wherein an addition of Rs. 1,000 was made. The intimation u/s 143(1)(a) was subsequently modified vide order u/s 154 of the Act dated September 15, 1999, making additions of Rs. 6,50,000 and Rs. 2,27,802 whereby loss computed in the computation of income at Rs. 1,15,89,039 stood reduced to Rs. 1,07,11,237. Thereafter, regular assessment u/s 143(3) was framed on January 18, 2000, wherein various additions/disallowances were made to the profit as per profit and loss account and the income was determined at Rs. 2,59,86,033. Against this income, set-off for unabsorbed depreciation for the assessment year 1996-97 was allowed at Rs. 99,70,510 and the net taxable income was determined at Rs. 1,60,15,523. As a result of the appellate order in the assessment year 1996-97, the unabsorbed depreciation stood enhanced to Rs. 1,72,55,633. Accordingly, assessment order for the assessment year 1997-98 was rectified vide order dated June 28, 2000, and the deduction for unabsorbed depreciation was enhanced from Rs. 99,70,510 to Rs. 1,72,55,638 and the net taxable income stood reduced to Rs. 87,32,400. The assessee had also preferred an appeal before the Commissioner of Income Tax (Appeals) who deleted all the additions except one addition of Rs. 35,000. Thus, the income determined after the appeal effect worked out to a loss of Rs. 1,06,06,159 which pertained to depreciation.

4. The assessee had also received a notice u/s 158BD of the Act for the block period April 1, 1989, to September 2, 1998, as certain documents relating to it had been seized in a search conducted by the Director of Income Tax (Investigation), Calcutta, and Chandigarh, at the residential and business premises of Bagrodia group on September 2, 1998. The documents were fully verified and the block assessment was framed u/s 158BD on September 25, 2000, accepting the return of the assessee.

5. On September 19, 2003, the Assessing Officer issued the impugned notice u/s 148 of the Act observing that the income chargeable to tax for the assessment year 1997-98 had escaped assessment within the meaning of Section 147 of the Act. The assessee was, therefore, required to furnish a return of income within 30 days from the service of that notice. The assessee complied with the said notice and filed the return on October 13, 2003 and also requested that a copy of the reasons recorded for initiation of proceedings u/s 147 of the Act be supplied to it so that it may file objections against the same. The Assessing Officer duly supplied the reasons, which read as under :

"Reasons for issuance of notice u/s 148
WINSOME TEXTILES INDUSTRIES LTD.
.Assessment year 1997-98

1. The assessee filed return of income on 21st November, 1997, declaring loss of Rs. (-) 1,15,89,039. The assessee did not avail of deduction in the normal computation of income under Chapter VI-A, i.e., deduction u/s 80IA as gross total income was loss (-) Rs. 1,15,89,039. However, the assessee declared income at Rs. 5,74,955 u/s 115JA, after availing of deduction u/s 80IA of Rs. 5,71,25,919.

2. The assessment was framed u/s 143(3) vide order dated January 18, 2002, by making the following additions :

	Rs .
(i) Disallowance on account of provision for bonus	47,68,023
(ii) Disallowance on account of estimated leave encashment	3,39,454
(iii) Unutilised MODVAT	1,41,77,182
(iv) Disallowance of foreign exchange difference	89,000
	1,93,73,659

The income was determined u/s 143(3) at Rs. 2,59,86,033 before allowing set off unabsorbed depreciation at Rs. 99,70,510. The assessed income after set off of unabsorbed depreciation is Rs. 1,61,15,530. The assessment was rectified u/s 154 wherein the brought forward depreciation (after giving appeal effect for the assessment year 1996-97) of Rs. 1,72,55,633 was allowed to be set off and the balance taxable income remained at Rs. 87,32,400. The assessee went in appeal before the Commissioner of Income Tax (Appeals) who deleted all the additions except the addition of Rs. 35,000 on account of estimated leave encashment. The income determined after appeal effect of the order of the Commissioner of Income Tax (Appeals) was loss (-) Rs. 1,06,06,159 that pertained to depreciation.

3. On close scrutiny of the record, it is believed that income chargeable to tax has escaped assessment within the meaning of Section 147. It is also found that the assessee has not disclosed fully and truly all material facts necessary for his assessment for the assessment year 1997-98.

4. The computation of total income as given in the return is reproduced below :

	Rs .	Rs .
Profit as per profit and loss account		5,90,42,4
Add :		
(i) Depreciation considered separately	2,79,47,958	
(ii) Disallowance under Rule 6D	12,170	
(iii) Entertainment expenses considered separately	1,07,573	
(iv) Charity and donation	10,00,000	

(v) Disallowance under Rule 6B	4,395	2,91,52,
		8,81,94,5
Less :		
(i) Depreciation as per chart enclosed	8,16,74,800	
(ii) Profit on sale of fixed assets	5,37,524	
(iii) Entertainment expenses under Section 37(2A)		
(a) First 10,000 100% 10,000		
(b) Balance 97,573 50% 48,786	58,786	
(iv) Dividend considered separately	1,37,796	
(v) Interest	1,88,849	8,25,97,
		55,96,7
B. Income from other sources		
Dividend		1,37,7
		57,34,5
Less : Brought forward unabsorbed depreciation from earlier years entitled for set off		1,73,23,
Gross total loss carried forward to next year		(-) 1,15,89,
Unabsorbed depreciation assessment year 1997-98		1,15,89,
Calculation of tax u/s 115JA		
Profit as per profit and loss		5,90,42,
Less : Profit u/s 80-IA(2)(iv)(b) of the Act (for details see page 3) (page 474 supra)	5,71,25,919	
Book profit u/s 115JA	19,16,516	
30% of book profits		5,74,9

In the above computations two points are to be noted :

(i) The gross total income is loss. The assessee has not claimed deductions u/s 80IA in the normal computation of income. This has been done to comply with the provisions of Section 80A(2) which says that aggregate amount of deductions under Chapter VI-A shall not, in any case, exceed the gross total income.

(ii) However, while computing u/s 115JA, the assessee has reduced profits u/s 80-IA(2)(iv)(b) to the tune of Rs. 5,71,25,919.

This appears to be contradictory. If the assessee has negative gross total income, there is no question that the assessee should reduce profits u/s 80-IA(2)(iv)(b), for calculation

of profit u/s 115JA. The reduction of profits u/s 80IA would arise, if the primary condition of Section 80IA is fulfilled.

Once the assessee has not availed of deduction u/s 80IA in his computation of total income, it is not understood how the assessee is reducing the profits eligible for deductions u/s 80-IA(2)(iv)(b). The computation of book profits should have been as under :

Rs.	
Net profit as per profit and loss account (before tax)	5,96,92,435.00
30% of book profits	1,79,07,730.50
Tax at 43 per cent.	77,00,324

Without prejudice to the above, even the profits for the eligible unit, i.e., Winsome Spinners, have, not been worked out as per the provisions of Section 80IA, on the following points :

(i) Depreciation : The quantum of depreciation as per the Income Tax Act would be much higher than taken by the assessee as per the Companies Act.

(ii) Applicability of Section 80IA(7) : The profits are to be determined taking into account the provisions of Section 80IA(7) wherein such eligible unit is deemed to be the only source of income.

(iii) Profits derived from industrial undertaking : Profits derived from industrial undertaking only are eligible for deduction.

(iv) Applicability of Section 80IA(10)

Interest--Diversion of borrowed funds by WTL to Winsome Spinners

The provisions of Section 80IA(10) are attracted wherein the Assessing Officer has to examine whether the profits of eligible business are inflated.

The computation of profits of Rs. 5,71,25,919 (i.e., Rs. 571.25 lakhs) as determined by the assessee is given below :

Current year	Previous year	
1996-97	1995-96	
(A.Y 1997-98)	(figure in lakhs	
(A. Y. 1996-97)		
Income from operations		
Production value	4384.59	1243.54
Cost of operations		
Raw material consumed	2285.71	716.72

Excise duty	158.36	42.67	
Expenses	591.62	71.34	
	3035.69	930.73	
	1348.90	312.81	
Less : Financial	623.93	215.52	
Add : Other income	6.54	0.42	
	731.51	97.71	
Depreciation	160.26	76.86	
Net profit before tax	571.25	20.85	
Less : Provision for taxation	--	--	
Net profit after tax	571.25	20.85	
Balance brought forward from previous	21.15	0.30	
Balance carried to balance sheet	592.40	21.15	

The issues are discussed in detail as under :

(i) Depreciation :

It may be noted that depreciation of Rs. 160.26 lakhs has been determined as per the Companies Act instead of calculation of depreciation as per the Income Tax Act. That means the computation of income eligible for deduction u/s 80IA should have been as per the Income Tax Act. The amount of depreciation as per the Income Tax Act would be much higher which would substantially reduce the net profit.

As per Section 115JA(2), Explanation (v) the book profit means the net profit as shown in the profit and loss account for the relevant previous year prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956, as reduced by

"the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in Sub-clause (b) or Sub-clause (c) of Clause (iv) of Sub-section (2) of Section 80IA, for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent, of the profits and gains under Sub-section (5) of Section 80IA."

The above provision nowhere mentions that the depreciation is to be taken under the Companies Act. In fact, the profits are to be determined as per the Income Tax Act.

(ii) Applicability of Section 80IA(7) :

The amount of deduction is to be governed by Section 80IA(7) which is reproduced below :

"Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of Sub-section (1) apply shall, for the purposes of determining the quantum of deduction under Sub-section (5) for the

assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made."

That means, in other words, for the purpose of determining the quantum of "tax holiday" profits u/s 80IA, the taxable income of the eligible business of the industrial undertaking, etc., is to be ascertained as if such undertaking were an independent unit owned by the assessee concerned and the assessee had no other source of income. Consequently, the unabsorbed losses, unabsorbed depreciation, etc., relating to the eligible industrial undertaking, etc., are to be taken into account in determining the quantum of deduction u/s 80IA even though these may actually have been set off against the profits of the assessee from other sources.

The assessee has failed to furnish the following details along with Income Tax return :

(i) The profit and loss account of Winsome Spinners for the initial assessment year, i.e., assessment year 1995-96 and subsequent assessment year 1996-97 as per the Income Tax Act.

(ii) The profit and loss account as per the Income Tax Act of Winsome Spinners for the assessment year 1997-98.

This would have enabled the Assessing Officer to determine correctly the amount of profits and gains eligible for deduction within the meaning of Section 80IA(7).

The data available for profit and loss account for the assessment years 1996-97 and 1997-98 is not sufficient to give the correct working of profits as per the provisions of the Income Tax Act.

No separate data of depreciation in respect of Winsome Spinners is available in the return for the assessment year 1996-97. Therefore, it is not possible to determine the depreciation as per the Income Tax Act of Winsome Spinners for the assessment year 1996-97.

Even the depreciation for the assessment year 1997-98 as per the Income Tax Act in respect of Winsome Spinners cannot be worked out from the data given in the Income Tax return for the assessment year 1997-98. However, an idea can be had regarding the depreciation on the additions made in the assessment year 1997-98 in respect of Winsome Spinners. This will not serve the purpose as the opening figures as on April 1, 1996, are not the written down value as per the Income Tax Act.

The assessee should have made available the profit and loss account as per the Income Tax Act for the assessment year 1995-96. Assessment year 1996-97 and assessment

year 1997-98. It may be pointed out that even no details are available in the returns for the assessment year 1995-96 and assessment year 1996-97 also.

The deduction is available only for the profit derived from any business of an industrial undertaking. The word "derived" has a narrow meaning.

(iii) Profits derived from industrial undertaking :

The assessee has included other income of Rs. 6.54 lakhs that includes interest income Rs. 1.02 lakhs, misc. income Rs. 1.57 lakhs, rent received Rs. 0.14 lakhs, insurance claims Rs. 4.48 lakhs. This deduction should be worked out after excluding these items. For this, we discuss the meaning of "derived from".

Meaning of "derived from" :

Now the issue has been settled by the hon"ble Supreme Court in the case of [Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore](#), . In that case--

The assessee was engaged in processing prawns and other sea food, which it exported. It also earned some import entitlements granted by the Central Government under an Export Promotion Scheme. The assessee was entitled to use the import entitlements itself or sell the same to others. It sold the import entitlements that it had earned to others. Its total income for the assessment year 1979-80 included the sale proceeds for such import entitlements and it claimed relief u/s 80HH of the Income Tax Act, 1961, in respect of the sale proceeds of the import entitlements. The Tribunal held that the relief could not be granted. Although for earlier years, i.e., assessment years 1975-76 and 1976-77, a Division Bench of the High Court had held that the income which the assessee made by selling the import entitlements was not a profit and gain which it had derived from its industrial undertaking, on a reference for the assessment year 1979-80, the Division Bench held in favour of the assessee, on the basis of the retrospective amendment to Section 28 of the Act by the Finance Act, 1990, making such receipts taxable as business profits. On appeal to the Supreme Court :

Held, reversing the decision of the High Court, that the provisions of Section 28 as amended made no difference. The word "derived" is usually followed by the word "from" and it means : "get, to trace from a source ; arise from, originate in, show the origin or formation of. The source of import entitlements could not be said to be the industrial undertaking of the assessee. The source of the import entitlements could only be said to be the Export Promotion Scheme of the Central Government whereunder the export entitlements became available. There must be, for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case, the nexus was not direct but only incidental. The industrial undertaking exported processed sea foods. By reason of such export, the Export Promotion Scheme applied. Thereunder, the assessee was entitled to import entitlements, which it could sell. The sale consideration therefrom could not be held to constitute a profit and gain derived

from the assessee's industrial undertaking. The receipts from the sale of import entitlements could not be included in the income of the assessee for the purpose of computing the relief u/s 80HH of the Income Tax Act, 1961.

Decision of the Karnataka High Court in [Sterling Foods Vs. Commissioner of Income Tax](#), reversed.

[Sterling Foods Vs. Commissioner of Income Tax, Karnataka](#), approved.

Cases referred to :

- (1) [Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad](#) ;
- (2) [Commissioner of Income Tax Vs. Wheel and Rim Company of India Ltd.](#) ;
- (3) [National Organic Chemical Industries Ltd. Vs. Collector of Central Excise, Bombay](#) .

The hon"ble Madras High Court in the case of [Commissioner of Income Tax Vs. Pandian Chemicals Ltd.](#), has explained the meaning of derived. It has been held that profits and gains eligible for deduction u/s 80HH must be derived from the actual conduct of the business. The expression "derived from" should be given a restricted meaning and whenever the Legislature wants to give a wider expression, the Legislature employs the expression "attributable to" and the use of the expression derived from indicates that the profit or gain should be derived from the conduct of the business and held as under (headnote) :

"that the assessee had claimed that the interest on deposits made with the Tamil Nadu Electricity Board had to be taken into account for purposes of Section 80HH. Though the assessee had to necessarily make the deposit with the Electricity Board for running the industry and the power supply would not be made without the deposit in favour of the Electricity Board, the income derived from the deposit with the Electricity Board could not be said to have been derived from the industrial undertaking. The immediate source of interest was the deposit itself. In other words, the immediate and effective source of the interest was the deposit and not the industrial undertaking. The fact that the amount was assessable as business income would not be sufficient to hold that the interest income was derived from the actual conduct of the business of the industrial undertaking. Hence, the interest could not be treated as income derived from an industrial undertaking for purposes of relief u/s 80HH."

The hon"ble High Court while pronouncing this judgment has applied the following decisions which are as under :

- (1) [Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad](#) ;

(2) [Hindustan Lever Ltd. Vs. Commissioner of Income Tax, Bombay City-I](#) ;

(3) [J.K. Trust Bombay Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City](#) ; and

(4) [Sterling Foods Vs. Commissioner of Income Tax, Karnataka](#), and many other High Court cases.

The hon"ble Gauhati High Court in the case of [North East Gases Pvt. Ltd. Vs. Commissioner of Income Tax](#), has held that there must be a direct nexus between the activity and the earning of the profit or gain. The income, profit or gain cannot be said to have been "derived" from an activity merely by reason of the fact that the said activity may have helped to earn the said income or profit in an indirect or remote manner. The same view was taken by the hon"ble Kerala High Court in the case of [Cochin Company Vs. Commissioner of Income Tax](#), and the hon"ble Bombay High Court in the case of [Hindustan Lever Ltd. Vs. Commissioner of Income Tax, Bombay City-I](#) .

In view of the above judicial opinion it has to be seen that even if there is nexus between the making of deposits and earning from the export of goods or merchandise, the interest income earned on such deposits cannot be said to be derived from the industrial undertaking. Therefore, a sum of Rs. 6.54 lakhs needs to be excluded for determining profits derived from industrial undertaking.

(iv) Applicability of Section 80IA(1)

(a) Interest--Diversion of borrowed funds by WTL to Winsome Spinners

It is seen that the assessee has diverted its borrowed funds from unit WTL to M/s. Winsome Spinners as is clear from the balance-sheet for the assessment year 1996-97 and the assessment year 1997-98 reproduced below :

	Balance-sheet			
Sources of funds	Winsome Spinners		Winsome Textile	
	(including figures of Winsome Spinners)			
	A. Y.	A. Y.	A. Y.	A. Y.
	1997-98	1996-97	1997-98	1996-97
(1)	(2)	(3)	(4)	(5)
	(figures in lakhs)			
Shareholders funds				
Share capital			580.00	580.00
Reserves and surplus	592.40	21.14	2154.62	1723.92
Loan funds				
Secured loans				
Head office WTL	4058.92	2572.73	5774.59	4133.44
Total	634.49	1031.38	107.0	306.54

			(unsecured loans)	
Application of funds	5285.81	3625.25	8616.29	6743.90
Fixed assets				
(a) Gross block	3698.07	2822.78	6162.90	5207.64
(b) Less : Dep.	237.52	77.26	1465.02	1193.79
(c) Net block		2745.52	4697.88	4013.85
(d) Capital work-in-progress	14.75	161.27	44.58	161.27
			4742.46	4175.12
Investments			813.02	813.03
Current assets				
Loans and advances				
Inventories	1040.21	386.30	1975.40	1253.36
Sundry debtors	661.76	222.92	1136.82	599.66
Cash and bank balances	171.71	58.59	303.97	120.81
Loans and advances	170.52	225.93	427.58	445.92
Total	2044.20	893.74	3843.77	2419.75
Less : current liabilities and provisions	233.69	175.28	782.96	664.00
Net current assets	1810.51	718.46	3060.81	1755.75
	5285.81	3625.25	3060.81	1755.75
			8616.29	6743.90

From the above it is seen that the assessee has attempted to show higher profits in the eligible unit.

The assessee WTL has share capital of Rs. 5.80 crores. The assessee has made investment of Rs. 58 lakhs in unquoted shares of Winsome Dyeing and Processing (subsidiary) (80,000 shares of Rs. 10 each) and in Winsome Capital Services Ltd. (subsidiary company) and has also made investment of Rs. 7.55 crores in quoted shares of Winsome Yarns Ltd. That means entire share capital is utilised in associated concerns. M/s. Winsome Dyeing and Processing amalgamated with company with effect from April 1, 1997.

WTL has debited interest of Rs. 9.62 crores whereas Winsome Spinners has debited interest on term loan Rs. 3.37 crores, interest on working capital Rs. 2.37 crores and bank charges Rs. 0.896 lakh (total Rs. 6.23 crores). The balance-sheet of Winsome Spinners shows that the assessee has taken loan from Winsome Textile Industries of Rs. 6.34 crores (L. Y. 1,031 crores) and no interest has been paid to Winsome Textiles Industries (head office).

When the assessee has prepared separate accounts for each unit, the interest should have been provided on the funds given by the head office (WTL). The WTL has raised working capital demand loan of Rs. 14.43 crores (A. Y. 1997-98) and the funds have

been diverted to Winsome Spinners. In this process, the profits of WTL have been reduced, because the interest which should have been debited to Winsome Spinners has been claimed in WTL. The provisions of Section 80IA(10) become applicable, because the course of business has been so arranged that the business transacted between two units produces to the assessee more than the profits which might be expected to arise in eligible business. The assessee has arranged the affairs in such a way that higher deduction is available to the eligible units. It is not known what exactly the amount has been utilised during the whole year on account of funds taken from WTL. However, on an average if we take an amount of Rs. 8 crores, the interest at 18 per cent. comes to Rs. 1.44 crores. That means the profit of Winsome Spinners got inflated by Rs. 1.44 crores.

(b) Inflation of expenses in WTL unit :

The expenses in WTL unit have been inflated to show more profits in the eligible unit, i.e., Winsome Spinners. It is interesting to see that out of total sale of Rs. 100.34 crores, the sale of eligible unit is Rs. 43.84 crores and the assessee is showing a profit of Rs. 5.71 crores. Whereas the total profit is Rs. 5.90 crores. Prima facie it shows that the assessee has attempted to show higher profits in the unit eligible for 100 per cent, deduction. On a sale of Rs. 57 crores of old unit, i.e., not eligible for deduction, the assessee is showing profit of Rs. 19 lakhs, whereas in the new unit, the assessee is showing a profit of Rs. 5.71 crores on sale of Rs. 43.84 crores. The GP is Rs. 13.48 crores on sale of Rs. 43.84 crores (new unit). The GP is Rs. 5.45 crores, on sale of Rs. 57 crores. This shows that apart from showing higher gross profit in the new unit, the assessee is showing higher expenses in the old unit. The break up of expenses is given below, which shows that less expenses are shown in the new unit.

	New unit	Old unit	Total (in lakhs)
(1)	(2)	(3)	(4)
Salary	104.92	7 385.80	490.72
Employee welfare	1.59	18.55	20.14
Manufacturing			
Stores and spares	91.56	244.12	335.68
Power and fuel	252.30	283.18	535.48
Repairs	1.29	3.83	5.12
Processing and dyeing	6.09	195.43	201.52
expenses			
Other manufacturing	2.08	7.05	9.13
Administration and other			
expenses			
Vehicle expenses	.71	10.34	11.05
Rent	.85	8.31	9.16
Printing and staff	1.50	11.17	12.67
Rates and taxes	.51	1.30	1.81

Director fees	--	.28	.28
Insurance	15.43	11.97	27.40
Travelling	--	28.33	28.33
Misc. expenses	2.13	22.75	24.88
Charity and donation	--	10.88	10.80
Postage and telegram	.69	26.79	27.48
Fees and subscription	.50	1.96	2.46
Bad debts	--	1.44	1.44
Auditor fees	--	.90	.90
Tax audit fees	--	.20	.20
Selling expenses			
Commission and brokerage	47.06	43.43	90.49
Foreign homeling	60.33	93.87	154.20
Advertise and other selling expenses	1.06	5.80	6.82
Financial expenses			
Interest on term loan	377.21	163.85	541.06
Interest on working capital	237.76	164.50	402.26
Bank charges	8.96	10.03	18.99

It may be noted that there are certain expenses where there is no possibility of getting break up, should have been apportioned on some scientific basis, e.g., turnover basis. The assessee has intentionally attempted to show less expenses towards the new unit. For example, vehicle expenses rates and taxes, director fees, misc. expenses, charity and donation, printing, postage and telegram expenses, have been shown on the higher side in the old unit and there does not appear to be any justification for doing that.

If all the above points are taken into account, there would not be profits in the new unit in the assessment year 1997-98. Therefore, no deduction would be allowed u/s 80IA even for computation of book profits u/s 115JA.

The book profit would be 30 per cent, of Rs. 5,96,92,435 i.e., Rs. 1,79,07,730.50, as against the book profits shown at Rs. 5,74,955 thereby income escaping assessment is Rs. 1,73,32,775.50.

In view of the above discussion, I have, therefore, reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, income of Rs. 1,73,32,775 has escaped assessment within the meaning of Section 147. Permission may be granted to issue notice u/s 148 of the Income Tax Act, 1961.

(Sd.) Mamta Bansal,
Asst. Commissioner of Income Tax,
Circle 4(1), Chandigarh."

6. On the receipt of the reasons, the assessee filed a representation in terms of letter dated December 9, 2003, (annexure P-9), challenging the validity of the notice on the ground that the proceedings u/s 147 had been initiated on mere change of opinion on the part of the Assessing Officer. It was pointed out that the main plank for holding that income had escaped assessment was that deduction u/s 80IA had been wrongly claimed by the assessee while computing book profits u/s 115JA as it had not been claimed in the normal computation of income. It was pointed out that the claim had been examined and accepted not only in the intimation u/s 143(1)(a) dated January 29, 1998, but also in the orders under Sections 143(3) and 158BD dated January 18, 2000, and September 25, 2000, respectively. Thus, it was contended that the satisfaction recorded by the Assessing Officer regarding the inadmissibility of this claim was merely a case of change of opinion on the same facts. It was further contended that the assessee had fully and truly disclosed all material facts necessary for its assessment in the light of the original return which was supported by audited accounts as also certificate of the auditors in respect of deduction u/s 80IA. The assessee, therefore, claimed that the observation in the reasons recorded that there was non-disclosure on the part of the assessee to disclose fully and truly all material facts for assessment was unwarranted and not based on the facts of the case.

7. The objections of the assessee were overruled by the Assessing Officer vide order dated January 30, 2004. In respect of validity of the notice, the Assessing Officer has observed as under :

"(a) Invalid notice

As per the provisions of Section 147 read with Section 151, the initiation of proceedings vide notice u/s 148 dated September 19, 2003, is within the time limitation prescribed by the statute. Also reasons for taking action u/s 148 have been duly recorded (copy of which has been duly provided to you) prior to issue of notice and with the prior sanction of the designated authority (the Commissioner of Income Tax in this case) as prescribed by the statute. Since the detailed reasons for the observation at para. 3 on page 1 of the reasons have been discussed at length in the subsequent paras of the reasons recorded, the objection w.r.t. notice being invalid is unfounded and without basis/foundation."

8. It is against this order that the present writ petition has been directed.

9. Mr. Akshay Bhan, learned Counsel for the petitioner, contended that it is a case where assessment had been completed u/s 143(3) of the Act and the proceedings u/s 147 are sought to be initiated after the expiry of four years from the end of the relevant assessment year. In such circumstances, it was not enough for the Assessing Officer to

entertain a reason to believe that income had escaped assessment. He was further required to record satisfaction and entertain reason to believe that the escapement had resulted on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. He pointed out that the observation made in para. 3 of the reasons recorded that "the assessee has not disclosed fully and truly all material facts necessary for his assessment for the assessment year 1997-98" was totally baseless and against the material on record. He pointed out that the only failure attributed to the assessee in the reasons recorded was that it had failed to file with the return, the profit and loss account of Winsome Spinners for the assessment years 1995-96, 1996-97 and 1997-98. Mr. Akshay Bhan contended that for filing return for the assessment year 1997-98, the assessee was required to attach the profit and loss account of Winsome Spinners for that assessment year only. There was no requirement to furnish profit and loss accounts of earlier years. He contended that the observation of the Assessing Officer that the profit and loss account of Winsome Spinners for the assessment year 1997-98 had not been attached with the return, is factually incorrect. This fact had duly been verified from the record produced by the departmental representative before this Court on May 27, 2004. In view of this factual position, counsel argued that there is no basis for attributing any failure to the assessee to disclose fully and truly the necessary facts for its assessment. Counsel, therefore, contended that since there was no failure on the part of the assessee to make a full and true disclosure of material facts, the impugned notice issued after the expiry of four years from the end of the assessment year, is clearly barred by limitation in view of the proviso to Section 147. For this purpose, he placed reliance on the judgment of this Court in [Duli Chand Singhania Vs. Assistant Commissioner of Income Tax](#), which was followed in [Mahavir Spinning Mills Ltd. Vs. Commissioner of Income Tax and Another](#). He also placed reliance on the judgment of the Supreme Court in [Commissioner of Income Tax and Another Vs. Foramer France \(through constituted attorneys\)](#). Mr. Akshay Bhan also contended that the deduction u/s 80IA in the computation of income u/s 115JA had been rightly claimed and allowed and, thus, there was no escapement of income.

10. Mr. D.S. Patwalia, appearing on behalf of the Revenue, on the other hand, supported the impugned order. He contended that the reassessment has still to be completed and the assessee can raise all these contentions before the authorities under the Act.

11. We have heard counsel for the parties and have perused the record.

12. In the reasons recorded for initiation of proceedings u/s 147, the Assessing Officer has tried to justify her opinion that deduction u/s 80IA was not admissible while computing the book profits u/s 115JA. This could at best be her satisfaction about escapement of income. However, since it was a case where assessment had been made u/s 143(3) of the Act and the proceedings were being initiated after the expiry of four years from the end of the assessment year under consideration. It was further necessary for her to record satisfaction that the escapement of income was by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.

In para. 3 of the reasons, only a general observation to this effect has been made without pointing out as to what facts had not been fully and truly disclosed. The only failure attributed to the assessee is that it had failed to file the profit and loss accounts of Winsome Spinners for the assessment years 1995-96, 1996-97 and 1997-98 with the return. It has been further stated that without the profit and loss account of the assessment years 1995-96 and 1996-97, the profits and gains eligible for deduction u/s 80IA(7) could not be properly determined. It is also stated that without the depreciation chart for the assessment year 1996-97, the depreciation chart for the assessment year under consideration cannot be verified.

13. It has been correctly pointed out by learned Counsel for the assessee that there was no obligation on the part of the assessee to furnish profit and loss accounts for the assessment years 1995-96 and 1996-97 with the return for the assessment year 1997-98. Counsel for the Revenue has also not been able to point out any provision of law or rule which required furnishing of profit and loss accounts of the earlier years. In the absence of any obligation to file these documents, the assessee cannot be charged with any failure to disclose fully and truly material facts necessary for its assessment. As far as the profit and loss account for the assessment year 1997-98 is concerned, the Assessing Officer was wrong in observing that the same had not been attached with the return. The records of the Department were produced by counsel for the Revenue on May 27, 2004, from where it was duly verified that the profit and loss account for the assessment year had been duly filed with the return. Similarly, the depreciation chart for the assessment year 1997-98 giving particulars required for computation of depreciation is also available on record.

14. The limitation of four years provided in the proviso to Section 147 has been made applicable only to cases where assessments have already been completed under Sub-section (3) of Section 143 or u/s 147. There is a specific purpose behind it. Where the return is processed u/s 143(1)(a), the Assessing Officer has no jurisdiction to examine the genuineness of the claims made in the return of income. He has only limited power of making adjustments on the basis of information available in the return. However, when an assessment is made u/s 143(3) of the Act, the Assessing Officer has very wide power to examine the genuineness of the claims made in the return and require the assessee to furnish whatever information the Assessing Officer deems necessary. In the present case, the assessment had been made u/s 143(3) of the Act and if the Assessing Officer was of the view that he required profit and loss account and depreciation charts of the assessment years 1995-96 and 1996-97 for examining the correctness of the claim u/s 80IA of the Act, he could have required the assessee to produce the same. Failure of the Assessing Officer to do so, cannot be treated at par with the failure of the assessee to disclose fully and truly all material facts necessary for its assessment.

15. We are, therefore, satisfied that there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year 1997-98. Accordingly, as held in [Duli Chand Singhania Vs. Assistant Commissioner](#)

[of Income Tax](#), the initiation of proceedings u/s 147 after the expiry of four years from the end of the assessment year is wholly without jurisdiction.

16. Accordingly, we allow this writ petition and quash the impugned notice u/s 148 dated September 19, 2003 (annexure P7A), dated September 19, 2003. No costs.