WP(C) 3643/2008
BEFORE

HON'BLE MR JUSTICE AMITAVA ROY
JUDGMENT AND ORDER(CAV)

By the challenge laid in the instant proceeding, the petitioner seeks to abrogate the process of reassessment sought to be initiated by the impugned notice dated 13.9.2007 issued by the Deputy Commissioner of Income Tax, Circle ,Jorhat under Section 148 of the Income Tax Act,1961 and the steps consequential thereto. By order dated 29.8.2008 this Court while issuing notice had , in the interim, interdicted the exercise proposed.

2. I have heard Mr GN Sahewalla, Senior Advocate assisted by Mr D.Senapati, Advocate for the petitioner and Mr U.Bhuyan, learned counsel for the Revenue.

3. The relevant facts providing the background as well as the rival pleadings have tobe essentially noted to better comprehend the arguments advanced. The petitioner has presented itself to be a Private Limited Company registered under the provisions of the Companies Act, 1956 with its registered office at Purana Titabar in the district of Jorhat, Assam. It is engaged in the business of manufacture and sale of cement and is an existing assessee under the Act. On 1.11.2004 ,it submitted its return of income for the assessment year 2004-2005 corresponding to the financial year 2003-2004 and deposited an amount of Rs.8,81,560.00 as tax under Section 140A of the Act. Along with its return, the audited account i.e. profit and loss account as well as the balance-sheet ending on 31.3.2004 were also filed. According to the petitioner, it had ,during the relevant year received an amount of Rs.1,44,99,462.00 and Rs.1,70,133.00 as transport subsidy and insurance subsidy respectively and the said amounts were duly accounted for and credited in the profit and loss account. It has insisted that the aforementioned subsidies had been received by it for actual conduct of the business of its industrial undertaking and thus it was entitled to necessary deductions under Section 80IC of the Act. The return submitted by it was accordingly processed by the concerned revenue authorities under Section 143(1) of the Act and on acceptance thereof, a further amount of Rs. 1,20,318.00 was determined to be payable by the petitioner which, accordingly was paid by it.

4. The Assistant Commissioner of Income Tax, Circle Jorhat subsequent thereto, issued a notice dated 29.4.2005 under Section 143(2) of the Act followed by a letter dated 6.7.2005 requiring the petitioner to furnish informations and particulars as referred to therein. Thereby the petitioner was inter alia asked to furnish the basis with evidence for claiming the deductions under Section 80IC of the Act. By letter dated 22.8.2005 the same authority also solicited the clarifications from the petitioner regarding its claim for the aforesaid deductions. As sought for, the petitioner furnished the essential clarifications endorsing its claim for deductions under Section 80IC of the Act, whereafter the assessment order dated 17.1.2006 was passed by the Assistant Commissioner of Income Tax , Circle Jorhat thereby allowing the petitioner's claim for deductions under the aforementioned provision of law in respect of the transport subsidy and insurance subsidy only.

5. While the matter rested at that, the petitioner was served with the notice dated 13.9.07(Annexure-8 to the writ petition) issued by the Deputy Commissioner of Income Tax, Jorhat Circle under Section 148 of the Act thereby proposing to reassess its income for the assessment year 2004-2005 on the ground that its income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. By its reply dated 26.9.07 the petitioner while requested for the reasons for the reassessment notice, intimated the authority concerned that its return for the assessment year 2004-2005 submitted on 1.11.2004 may be treated to be one offered in compliance of the said notice. The Assistant Comm

issioner of Income Tax, Circle Jorhat thereafter on 3.3.2008 furnished the reasons in support of the notice under Section 148 of the Act and also required the petitioner to offer its explanation as to why the transport subsidy of Rs.1,44,99,462/- and the insurance subsidy of Rs.1,70,133/- would not be treated as incidental to the business of the assessee and thus ineligible for deductions under Section 80IC. The petitioner accordingly on 12.5.2008 submitted its detailed reply with a request to drop the reassessment proceeding in the facts and circumstances of the case. The Assistant Commissioner, Income Tax, Circle Jorhat ,however, vide his communication No.ARIT/147/Pancharatna/04-05/AABCP/9172 G dated 9.7.08 provided pointwise reply to the petitioner's explanation. By the impugned communication dated 9.7.2008, the said authority intimated the petitioner that further informations on certain points relating to its return pertaining to the assessment year 2004-2005 submitted on 1.11.2004 were required to be furnished and thereby directed production of document , accounts and evidence in support of the said return. The extra ordinary jurisdiction of this Court has been invoked at this stage.

6. The Assistant Commissioner of Income Tax, Circle Jorhat , Respondent No.4 , in his affidavit while endorsing the impugned notices to be valid, has dismissed the petitioner's claim for deductions under Section 80IC of the Act for the transport subsidy and the insurance subsidy as referred to its return for the assessment year 2004-2005 as the same were merely grants receipt from the government and not construable as profit and loss out of the conduct of business as envisaged in the legal provision involved. The answering respondent asserted that the amounts of these two subsidies though constituted income chargeable to tax under the Act , the same had escaped assessment for which the reassessment proceeding had been validly initiated by the Revenue. The impugned notice dated 13.9.2007 under Section 148 of the Act has been ratified being backed by reasons to believe that income chargeable to tax pertaining to such subsidies had escaped assessment. The answering respondent dismissed the plea made in the writ petition that the impugned notice had been issued following a change in opinion on the existing materials and/or facts to review the earlier order by making a fishing and roving enquiry. The impugned notice has been sought to be justified also with reference to clause(c) (iii) of Explanation 2 of Section 147 of the Act.

Pleading that in the earlier assessment, the petitioner's income had been made the subject of excessive relief under the Act, the respondents have maintained that by the impugned notice under Section 148 , no final conclusion had been conveyed on the issue and that it was open to the petitioner to satisfy the department that no tax chargeable to tax had escaped assessment. The petitioner's contention that the subsidies in question are capital receipts and thus not liable to be tax, has been refuted by the respondents contending that it(petitioner) had included the said subsidies under the Head Misc Income and had credited the same in its profit and loss account as revenue receipt. While reiterating that subsidies cannot qualify for deductions under Section 80IC of the Act, the respondents have contended that no view or opinion had been expressed by the Assessing Officer regarding the eligibility or otherwise of the deductions of the aforementioned subsidies under Section 80IC of the Act earlier and that therefore , the question of change in opinion by taking a different view of the matter on the subsisting facts did not arise. They also questioned the challenge in the instant proceeding tobe pre matured and thus not maintainable in law.

7. Mr Sahewalla has empathically urged that the impugned notices are patently illegal and without jurisdiction and are thus liable to be adjudged null and void. According to the learned Senior Counsel, the subsidy schemes under which the transport subsidy and the insurance subsidy had been sanctioned to the petitioner presupposes its business activities relatable thereto as an essential pre condition therefor and in that view of the matter, it being obviously eligible for the benefit of deductions under Section 80IC in connection therewith, the impugned notices are manifestly illegal and are liable to be annulled. He e

mphasized that the transport subsidy has a direct nexus with the business activi ty of the petitioner contributing to its profit derived therefrom and thus it w as rightly accorded the benefit of deductions in the assessment order dated 1 7.1.2006. Mr Sahewalla contended that the assessment so made , was on a correct appreciation of facts and law involved and that the initiation of the process of reassessment by the impugned notices being by way of a review based on the s ame facts is palpably untenable in law rendering the impugned notice dated 13.9. 07 inoperative and invalid. As a mere change in opinion cannot be a valid groun d for reopening an assessment already made , on an objective evaluation of th e return and the supporting materials thereof, the impugned reassessment procee ding is vitiated by want of jurisdiction , he contended. The learned Senior Cou nsel dismissed the reasons furnished by the revenue authority as the basis for initiating reassessment proceeding to be frivolous and unworthy of generating a belief for validly initiating a reassessment proceeding as contemplated in Section 147 of the Act .The learned Senior Counsel has urged that as the transp ort and insurance subsidies have been sanctioned by way of reimbursement of t he expenses of the petitioner towards the related enterprises involved in its business , the gross amounts thereof can by no means be treated as income and therefore, the very premise of the commencement of the reassessment proceedin g being factually non existent , the impugned notices are obviously unsustainab le in law and are liable to be set aside. According to Mr Sahewalla, the reply i ssued by the concerned revenue authority to the explanation furnished by the pet itioner to the notice under Section 148 of the Act demonstrates a final adjudi cation in the matter against it and therefore, the instant writ petition is not premature . In support of his arguments, the learned Senior counsel has place d reliance on the following authorities :-

1) 257 ITR 60, Centre for Women’s Development Studies vs. Deputy Director of Income Tax.
2) 237 ITR 579, Commissioner of Income Tax, Karnataka vs. Sterling Foods, M angalore.
3) (1997) 7 SCC 764, Sahney Steel and Press Works Ltd, Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-1,Hyderabad.
4) (2005) 13 SCC 102 , Ponni Sugars (Erode) Ltd. Vs. Deputy Commercial Tax Officer.
5) 238 ITR 354, Sarda Plywood Industries Ltd. Vs. Commissioner of Income Ta x.
6) 191 ITR 518, Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner o f Income Tax.
7) (1995) 3 GLR 249 Padamram Payeng(Gare) @ Basanta Gare vs. State of Assa m.
8) 300 ITR 6, Commissioner of Income Tax vs. Eltek SGS(P) Ltd.
9) (208) 3 DTR 94 Commissioner of Income Tax vs. Arvind Construction Co Ltd .
10) (2008) 14 DTR (Kol) (Trib) 462 Assistant Commissioner of Income Tax vs. Maithan Smelters Ltd.

8. Mr Bhuyan, per contra, has contended that having regard to the stage of the proceeding before the revenue authorities , the instant petition is clear ly pre matured and on that count alone, it is liable to be rejected. As the pet itioner has an ample opportunity of presenting its case on all counts in the pro ceeding pending before the Assistant Commissioner of Income Tax, Circle Jorhat, on merits, this Court would not entertain the instant petition, he urged. While contending that a transport subsidy is a legally recognized taxable receipt liab le to be assessed, the learned Standing Counsel has maintained that in the asses sment order dated 17.1.2006 the transport subsidy and the insurance subsidy were not taxed due to mistake of law and hence, in the above premise, the impugned notice under Section 148 of the Act is valid. Drawing the attention of the Court to clause (c) (iii) of Explanation 2 to Section 147 of the Act, Mr Bhuyan has insisted that the impugned notices are unassailable in law and therefore, the ch allenge projected in the instant petition is liable to be negated. Maintaining w

ith all emphasis at his command that the impugned notice is not an yield , of a mere change in opinion of the authority concerned, but a statutory imperative to desist escapement of income assessable to tax, Mr Bhuyan has contended that as the impugned notices are neither malafide , nor influenced by any jurisdictional error, no interference therewith is warranted. The learned Standing Counsel sought to sustain his contentions based on the following decisions :

1) 257 ITR 60, Centre for Women's Development Studies vs. Deputy Director of Income Tax;

2) 242 ITR 204, Commissioner of Income Tax vs. Andaman Timber Industries Ltd.

3) 259 ITR 19, GKN Drineshafts (India) Ltd. Vs. Income Tax Officer

4) 275 ITR 609 , Assam Co. Ltd vs. Union of India(UoI) and Ors.

9. The pleadings of the parties and the arguments advanced delineate the issues seeking adjudication. The facts leading to the instant petition being matters of record are not in dispute. Noticeably, the Revenue has not questioned the eligibility of the petitioner as an industrial unit to avail the benefit of the transport subsidy as well as insurance subsidy under the relevant schemes or disputed that in fact, for the assessment year involved it had availed the same. Whereas, the petitioner's claim that such subsidies have contributed to the profit and gains in its business of manufacture and sale of cement , the Revenue seeks to construe the same to be an income incidental thereto and therefore, not qualified for deduction under Section 80IC of the Act. Significantly, the Assessing Officer i.e. Assistant Commissioner of Income Tax, Circle Jorhat, by his assessment order dated 17.1.2006 completed under Section 143(3) of the Act had allowed deduction of the above amounts from the taxable income of the petitioner. The present litigation as has been alluded hereinabove is activised by a notice under Section 148 of the Act seeking to conduct a reassessment on the plea that the amounts of these subsidies had due to error of law been deducted from the taxable income of the petitioner by a purported application of Section 80 IC thereby occasioning escapement of income within the meaning of Section 147 of the Act. As the Revenue amongst others has questioned the maintainability of the instant
petition on the ground of it being pre-matured, the proceeding under Section 148 of the Act being pending before the Assistant Commissioner of Income Tax, Circle Jorhat, it would be expedient to deal with this aspect at the threshold.

10. In response to the notice dated 13.9.2007 under Section 148 of the Act intimating the petitioner of the proposal to reassess its income for the assessment year 2004-2005, it(petitioner) offered its return originally submitted. It ,however, requested the concerned revenue authority to furnish it with the reasons for the proposed reassessment. By letter dated 3.3.2008 the Assistant Commissioner of Income Tax, Circle Jorhat sought for an explanation from the petitioner as to why the transport subsidy and the insurance subsidy amounts as above, would not be treated as incidental to its business and therefore, not eligible for deduction under Section 80IC. Along with the said communication, the supporting reasons were also forwarded. As the same would disclose the Assessing Officer entertained the view that the profit and gains which are derived from an industrial undertaking are only eligible for deduction and that any income which is merely incidental to its business is not so. The Revenue authority relying on the decision of the Calcutta High Court in CIT vs. Andaman Timber Industries Ltd, 242 ITR 204 therefore concluded that the petitioner's income of Rs. 1,46,69,595(transport subsidy of Rs. 1,44,99,462/- + Insurance subsidy of Rs.1,70,133/-) though chargeable to tax had escaped assessment within the meaning of sub clause(i) of clause (c) of Explanation 2 to Section 147 of the Act.

11. The petitioner submitted a detailed reply to the notice and the reasons so cited, reiterating its claim for deduction of the aforementioned sums towards the subsidies under Section 80 IC of the Act asserting that those were within the purview of profit and gains within the meaning of Section 80IC an

d that the initiation of the reassessment proceeding under Section 148 of the Act was patently illegal and without jurisdiction. The petitioner also questioned the validity of the impugned notice on the ground that the same was induced by a mere change of opinion on the same set of facts and materials and contended that thereby a roving and fishing enquiry was endeavored to be undertaken though impermissible in law.

The Assistant Commissioner of Income Tax, Jorhat Circle by his letter dated 9.7.2008(Annexure-XII) forwarded his response to the points of objection taken by the petitioner. While refuting the assailment of want of jurisdiction , the revenue authority asserted that the initiation did not involve any change of opinion and that for valid reasons an unconsidered area of previous scrutiny had been selected for the enquiry there being reason to believe that income exigible to tax had escaped assessment as contemplated under Section 147 of the Act. It was inter alia clarified that the process proposed to ascertain whether the amounts by way of subsidies had been derived from the industrial undertaking or not, the same being the condition precedent for eligibility to avail deduction under Section 80 IC. It was sought to be avowed further that in the earlier assessment, the transport subsidy and the revenue subsidy had been catalogued under the Head miscellaneous income by the assessee and the same were not regarded as reimbursement of certain expenses of the undertaking. The letter in clear terms stated that thereby the objection taken by the petitioner to the initiation of the proceeding under Section 148 of the Act stood disposed.

12. A plain reading of the reply of the revenue authority to the petitioner’s challenge to the initiation of the reassessment proceeding demonstrates a final decision thereon. In other words, this reply does not in the opinion of this Court leave any scope to contemplate that the petitioner would be left with any meaningful scope to pursue its objection with regard to the maintainability of the process initiated by the impugned notice dated 13.9.2007. The decision of the Apex Court in GKN Driveshafts(India) Ltd. (Supra), relied upon by the respondents to mount its impeachment on the maintainability of the writ petition has no application in the facts of the instant case in as much as , therein their Lordships were seized with a situation where the revenue authority had not disposed of the objection filed by the assessee to the notice under Section 148 of the Act. The challenge to the maintainability of the instant proceeding therefore fails.

13. As observed hereinabove, the petitioner’s entitlement to the subsidies in question under the relevant schemes has remained unquestioned by the revenue. These subsidies as the schemes produced in course of the arguments reveal , are by way of incentive to the eligible industrial unit in the selected areas as referred to therein with a view to promote the growth of industries thereat. The selected area (A) as mentioned in the transport subsidy scheme includes inter alia the North Eastern Region comprised amongst others of the State of Assam. The scheme sets out the details of the subsidy to be awarded to the industrial unit transporting raw material as well as finished products to be brought in to and taken out respectively of the selected areas and the stipulations governing such grant. It is also not in dispute that the petitioner during the assessment year 2004-2005 had received an amount of Rs.1,44,99,462.00 and Rs. 1,70,133.00 by way of transport and insurance subsidies respectively under the schemes subsisting then. Significantly, it is not the stand of the revenue that these receipts by the petitioner if construable as profit and gains and derived from its business would not qualify for deduction under Section 80-IC being impermissible thereunder on any other count. In other words, the Revenue’s cavil is not based on any non observation of or nonconformity with any other prescription of Section 80 IC to disentitle the petitioner of the benefit of deduction as contemplated thereunder. Section 80-IC appearing under Chapter VIA provides for special provisions in respect of certain undertakings or enterprises in certain special category States. The legislative intendment to grant the benefit of deduction as envisaged therein subject to the compliance of the ordainment thereof is t

hus obvious and hence, interpretation to actualize it ought to be the desider atum. Clause (1) of Section 80-IC presenting itself as the hub of the debate thu s deserves extraction for immediate reference -

80-IC.(1) Where the gross total income of an assessee includes any prof its and gains derived by an undertaking or an enterprise from any business refe rred to in sub-section (2), there shall, inn accordance with and subject to the provisions of this section, be allowed, in computing the total income of the a ssessee, a deduction from such profits and gains , as specified in sub-section(3).

The conundrum that seeks resolution in the instant case is that whether the amo unts of subsidies received by the petitioner can be regarded as profits and gra ins derived by it from its business referred to in sub-section(2). As observed h ereinabove, the parties are not at issue on the nature of the business or any as pect relatable thereto as is outlined in sub-section(2). To revert to the peti tioner's contention , these receipts are profits and gains contributing to it s income from the business for the assessment year involved and the revenue to t he contrary asserts it only to be incidental thereto(business) and therefore, not eligible for the deduction. It is profitable at this stage to mark that the word 'income' as defined in Section 2(24) of the Act includes inter alia prof its and gains. Profits and gains therefore are an integral and inseparable segme nts of income as is contemplated by the Act.

14. The Apex Court in Sahney Steel & Press Works Ltd (Supra), was seiz ed with the situation as to whether the subsides in the form of certain facilit ies and incentives which included subsidy on power accorded by the Government of Andhra Pradesh to new industrial undertakings that had commenced production on or after 1.1.69 was a capital or revenue receipt. The assessee company, appel lant had contended that subsidies so received by it for the accounting year r elating to the assessment year 1974-75 were of a capital nature.

15. Placing reliance on the decision rendered in Pontypridd and Rhondda Joint Water Board vs. Osime, (1946) All ER 668, it was held that the subsidies w hether by way of refund of sales tax or relief or electricity charges or water c harges could not be treated as aid to set up the industry of the assessee and t herefore, those were operational subsidies and not capital subsidies . Their Lo rdships however, enunciated that if any subsidy is given, the character thereof in the hands of the recipient - whether revenue or capital would have to be det ermined by having regard to the purpose for which it is given. However, if it i s given by way of assistance to the assessee in carrying on his trade or busine ss , it has to be treated as trading receipt and the source of the fund would be immaterial. The Apex Court concluded that the subsidies involved in the case were of revenue character and were liable to be taxed accordingly.

It would thus appear that a subsidy if granted, for production or brin ging into existence any new asset of the assessee, it would be construed to be a capital receipt. However, if it is for the purpose of assisting the unit to carry on its already existing business, it would be in the nature of revenue r eceipt and thus taxable.

16. The Calcutta High Court in Sarada Plywood Industries Ltd(Supra), while reiterating the above proposition observed with reference to the releva nt provisions of the transport subsidy schemes involved that the subsidy was granted so as to recompense the manufacturing unit to the extent of the extra transport costs which a manufacturer has to incur. Their Lordships noticed tha t such transport costs were conditional on (1) costs incurred for transport of raw materials and finished products (2) limited duration of expenditure (3) m ode of calculation of such costs being laid down under the scheme and thus not the entire costs and (4) the manner of grant thereof. It was concluded that keep ing these factors into consideration , it could be deduced that the subsidy is granted for recouping and/or reimbursing the expenses on account of transpor t so as to supplement the trading receipts of the manufacturer so as to entitl e him to compete with those of the same products having their manufacturing un

its at places which are not in a backward area.

17. The Calcutta High Court in the case of Kesoram Industries & Cotton Mills Ltd (Supra), had inter alia held that the subsidy in respect of power tariff that was granted to the assessee by the government under a well defined policy is a revenue receipt and is exigible to tax as profits and gains of business under Section 41(1) of the Act. It was further outlined that such a subsidy was inseparably connected with the business carrying on by the assessee and was contingent upon the industry's continuing in production. It was also observed that as the subsidy was given for the development of the business and not for any unrelated purpose, there was no room or basis for disassociating it from the business of the assessee.

18. The receipt of subsidies for transportation of slippers to the Railways at different sites , in the facts of the case in the Commissioner of Income Tax vs. Arvind Construction Co Ltd (Supra) was considered to be a part of the assessee's business receipts and resultantly the benefit of deduction to it under Section 80-IA of the Act was granted.

19. Though the above decisions as such do not deal with any scheme for deduction as under 80-IC, these unequivocally establish that the subsidies(1) by way of transportation charges to recompense the expenses incurred in connection therewith for the furtherance of the business of the assessee (2) towards power consumption therefor and (3) refund of exactions suffered in its business activities are all construed as revenue receipts and are liable to be taxed subject to the provisions of the Act applicable. The emphasis however, is that the subsidies/refund in connection with the expense towards the costs of transportation , power consumption and levies cannot be readily disassociated with the related business enterprise of the assessee and would require cogent and persuasive facts to the contrary to dislodge this comprehension.

20. The Apex Court in Commissioner of Income Tax vs. Sterling Foods (Supra), while dwelling on the deduction under Section 80HH of the Act, noticed in the contextual facts that the assessee firm involved therein was engaged in processing prawns and other sea food which it exported during the relevant assessment year. 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. The issue posed was whether the sale proceeds of such import entitlements qualified for the relief under Section 80HH of the Act. Answering in the negative, their Lordships held that the sale consideration of import entitlements could not be regarded as profits and gains derived from the assessee industrial undertaking for the purpose of deduction under the above statutory provision as the source of import entitlement was an export promotion scheme of the Central Govt. and not the industrial undertaking.

21. In the Commissioner of Income Tax vs. Madras Motors Ltd, their Lordships of the High Court of Madrass on an exhaustive appraisal of the law enunciated by the Apex Court as well as that High Courts , held that the amounts received by the assessee under Modvat credits and international price rationalization were directly relatable to the industrial undertaking alone and to no other activity other than the business activity of the assessee. Their Lordships were of the considered opinion that the amounts received by way of Modvat credits could not have received by the assessee had it not purchased the raw materials for running its industry of manufacturing the forgings and thus that credit would have to be held as directly relatable to the industrial undertaking and the activity of the assessee company. It was further held that the interest payable to the amount receivable by the assessee during the course of its business on account of the sale of forgings also qualified to be included as the profits and gains derived from the business of the assessee. In arriving at this conclusion, their Lordships noticed the observations of the Apex Court in CIT vs. Sterling Foods, 237 ITR 579 and in Cambay Electric Supply Industrial Co. Ltd. Vs. 113 ITR 84 that for the application of the word derived from in the legal provision involved in those cases , a direct nexus between the profits and gains and the industrial undertaking was essential.

22. These two decisions as well, dealt with a scheme for deduction under Section 80 HH of the Act.

23. The claim for deduction under Section 80HH qua, subsidy or transport subsidy was rejected by the Calcutta High Court in Commissioner of Income Tax vs. Andaman Timber Industries Ltd relying on the rendering of the Apex Court in CIT vs. Sterling Foods (Supra). While emphasizing that the profits and gains which are derived from an industrial undertaking are only eligible for deduction under Section 80HH, it was laid down that the subsidy or transport subsidy is not the immediate source or do not have direct nexus with the activity of the industrial undertaking and was only an incidental income or profit to the benefit of the assesse or of the industrial undertaking and therefore not eligible for deduction. It was held that such a subsidy was an aid by the government under the relevant scheme and this could not be treated as profits derived from the industrial undertaking.

24. It is time to turn to Section 80HH which, for ready reference is quoted hereinbelow :

80HH.(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof.

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A comparison of the sub sections (1) of Section 80HH and 80IC brings to the fore the distinction in the language employed therein. Having regard to the limited scope of scrutiny in the present case as projected by the pleadings of the parties ,suffice it would be to focus on the aspect of the profits and gains referred to in the two provisions seeking deduction in the computation of total income of the assessee . It is manifest that whereas the profits and gains to be eligible for deduction has to be derived from an industrial undertaking or the business of a hotel to which this section applies , the same to qualify for deduction would have to be derived by an undertaking or an enterprise from any business referred to in sub-section(2). Thus , while the profits and gains to be worthy for deduction have to be derived from an industrial undertaking or a business of hotel, vis a vis section 80HH , it would be enough if the same is derived by an undertaking from its business referred to in sub-section(2) of Section 80IC. The language employed in Section 80IC therefore visibly is of wider import and amplitude and the profits and gains to be allowable for deduction have to be derived from the business in which the industrial undertaking is engaged. Such profits and gains need not essentially be derived from the industrial undertaking . Though it is indubitable that there has to be a direct and perceptible nexus between the profits and gains and the business of the industrial undertaking from which the same are derived, the rigour of the essentiality of correlation with the industrial undertaking is not a stolid imperative as in Section 80HH. If the profits and gains of the assessee however, have no association, or any relation whatsoever with the business of the industrial undertaking involved or cannot be imaginated to be related or connected therewith, by no means the same would qualify to be deducted from the total income under section 80IC.

25. The decision of the Delhi High Court in Commissioner of Income Tax vs. Eltek SGS P Ltd(Supra), holding that the duty drawback in the nature of reimbursement of the custom duty paid on the imported goods subject to a manufacturing process had a direct nexus with the industrial undertaking itself noticed the difference in the language between section 80HH and 80 IB of the Act which similarly contemplates profits and gains derived from any business of an industrial undertaking and not from it.

26. As observed hereinabove, the essence of the justification of the Revenue for initiating the reassessment proceeding is the perception that the subsidies received by the petitioner are not income construable as profits and g

ains derived from it , but merely incidental. A plain reading of the reasons furnished by the Assessing Officer unmistakably proclaims that this rational is wholly structured on the language of section 80HH and the decision of the Calcu tta High Court in Andaman Timber Industries Ltd also based thereon. The reply dated 9.7.08 of the Revenue authority to the points of objection submitted by t he petitioner also does not disclose any weighty or persuasive material to endor se this supposition. This assumes significance in the background of the earli er assessment being conducted and completed under Section 143 of the Act on the same inputs following an exhaustive scrutiny thereof and in compliance of the procedure so prescribed. While it is legally permissible to infer that in cour se of such assessment all relevant aspects regarding eligibility or otherwise of such deduction must have been considered on due verification , the reason for c onducting a fresh assessment on the premise that some taxable income had escape d assessment is not readily discernible.

27. It cannot be gainsaid that having regard to the lay out of investment and income designed for any commercial or business venture, reimbursement of the expenses incurred to whatever extent, would logically contribute to the pr ofits and gains derived from the related enterprise and thus would augment the over all income. The amounts of subsidies as the facts of the case reveal ar e by way of government assistance or grants under the schemes to provide stimulu s to the willing industrial establishments to cater to the industrial growth in the region and therefore the same(subsidy) are aimed necessarily at neutraliz ing the expenses incurred and thus reinforce the eventual income of the busine ss undertaking . The words derived by an undertaking or an enterprise from any business having regard to the plentitude of expanse would take in their fold p rofits and gains made by any activity associable with the business it undertakes and which forms the subject matter of assessment under the Act to determine its tax liability thereunder. Judged by the above criteria fortified by the statuto ry provision involved, the plea of the Revenue in favour of the impugned notic e does not commend for acceptance.

28. Section 147 of the Act which contemplates assessment of income or r eassessment of income irrefutably , prescribes a reason to believe that any in come chargeable to tax had escaped assessment for any assessment year, the proc edure to undertake the process being lodged in Section 148. The reason to beli eve that any income chargeable to tax has escaped assessment is thus the sine quanon for the exercise of the power of the Assessing Officer under Section 14 7 of the Act. Axiomatically therefore, absence of any reason or irrelevance the reof or lack of any decipherable nexus between the reason and the belief would r ender the proposed exercise wholly unauthorized.

29. The expression reason to believe had come for scrutiny in a numb er of decisions including 275 ITR 609, Assam Co. Ltd vs. Union of India and Or s rendered by this Court. It is considered unnecessary to burden this judgment w ith the plethora of judicial pronouncements on the proposition enunciated ther ein. It has been underscored time out of number that reason to believe to be v alid has to have a rational and logical inter relation with the belief that a ta xable income has escaped assessment. The belief necessarily has to be genuine a nd bonafide and not a charade. The subjective satisfaction ought to be guided b y the objective perceptions based on tangible materials. While any bonafide and genuine endeavour to arrest evasion of tax would be a legal obligation under th e Act , no roving enquiry sans, any factual basis for such belief of escarpmen t of assessment of any taxable income can be approved lest it occasions an ab use of the process of law.

30. On a totality of considerations recorded hereinabove, I am of th e unhesitant opinion that the impugned notice initiating the proceeding under S ection 148 of the Act against the petitioner is not in conformity with the leg islative prescriptions mandated in Section 147 of the Act when viewed in the factual background of the instant case.

31. The petition therefore succeeds. The impugned notice dated 3.9.200 7 (Annexure-VIII) and the communication dated 9.7,.2008(Annexure-XII) are hereby quashed. No costs.