

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM ]

I.T.A No.1150/Kol/2014

Assessment Year : 2007-08

M/s.Portside Estates Ltd.,  
Kolkata  
(PAN:AABCP 4832 D))  
(Appellant)

-vs.-

A.C.I.T., Circle-5,  
Kolkata  
  
(Respondent)

For the Appellant : Shri Ravi Tulsian, FCA

For the Respondent : Shri Sital Chandra Das, JCIT

Date of Hearing : 25.08.2016.

Date of Pronouncement : 02.09.2016.

**ORDER**

This is an appeal by the Assessee against the order dated 06.03.2014 of CIT(A)-VI, Kolkata, relating to AY 2007-08.

2. The assessee is a company engaged in the business of real estate development and trading in goods, Merchandise and securities. The assessed filed return of income for A.Y.2007-08 declaring total income of Rs.16,83,700/- under the normal provision of Income Tax Act, 1961 (Act) and Rs.19,89,206/- being book profits u/s 115JB of the Act. Arriving at the total income which comprised only the income under the head income from business the assessee had set off brought forward loss of Rs.3,81,937/-. The claim for such set off was disallowed by AO for the following reasons :-

“2. Set-off Brought Forward Losses :

The AO while finalizing the assessment order u/s 143(3) for the assessment years 2005-06 and 2006-07 has not allowed the assessee for carry forward of losses prior to 31.03.2005 as there was a change in the share holding pattern. As per section 79 of the I.T.Act, 1961, if there is change in share holding pattern more than 51% of the amalgamating company, then losses are not allowed to be carried forward.

Following the decision of AO for assessment years 2005-06 and 2006-07 where this issue has been dealt in detail, the assessee is not allowed to set off any loss, prior to 31.03.2005 with income earned after that.”

3. On appeal by assessee CIT(A) confirmed the order of AO by following his predecessor in assessee's own case on an identical issue for A.Y.2006-07.

4. Before me, the assessee pointed out that for A.Y.2005-06 and 2006-07 for identical reasons the setting off of brought forward loss was not allowed by the AO while concluding the assessment of the assessee for A.Y.2005-06 and 2006-07 and ultimately the Tribunal in ITA Nos.1673/Kol/2011 and 182/Kol/2012 for A.Y.2005-06 and 2006-07 by order dated 07.04.2014 had allowed the claim of the assessee.

5. The following are the relevant findings of the Tribunal :-

*“3. We have heard rival submissions and gone through facts and circumstances of the case. Briefly stated facts are that for the relevant assessment year 2005-06, assessment was framed u/s. 143(3) of the Act. During the course of assessment proceedings, AO noticed from the accounts filed along with the return of income that assessee had claimed carry forward of following losses incurred in different years:*

<u>“AY</u>	<u>Loss under the head</u>	<u>Amount</u>
2000-01	Business	Rs.10,96,105/-
2001-02	-do-	Rs.31,82,935/-
2002-03	-do-	Rs. 8,160/-
2003-04	-do-	Rs. 10,150/
2004-05	-do-	<u>Rs. 11,460/-</u>
		Rs.43,08,810/-“

*The AO when scrutinized the accounts found that the shareholding of the company has been changed during the previous year and public are not substantially interested in the company and therefor issued show cause notice to the assessee to explain as to why this claim of carry forward losses should not be disallowed. The assessee filed submissions before the AO but AO disallowed the carry forward losses by stating that during the previous year relevant to this assessment year, the assessee company is not a company in which public are substantially interested. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO. Aggrieved, now assessee is in appeal before us.*

*3.First of all, we have to discuss the bare facts of the assessee company. The shareholding pattern of the assessee company Portside Estates Ltd. is as under:*

Sl. No.	Shareholder's Name	Folio No.	Nos.	% of total
1	Mr. M.K. Jalan & Keventer Projects Ltd.	25	10	0%
2	Mrs. S.P. Jalan & Keventer Projects Ltd.	26	10	0%
3	Mr. Mayank Jalan & Keventer Projects	27	10	0%
4	Mr. Ratanlal Sethia & Keventer Projects Ltd.	28	10	0%
5	Mr. Sanjay Gupta & Keventer Projects	29	10	0%
6	Mr. Radhe Shyam Khetan & Keventer Projects Ltd.	30	10	0%
7	Keventer Projects Ltd.	31	6,517,940	90%
8	Manoharlal Phoolchand Kanungo	32	725,000	10%

	Total :	7,243,000	100%
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*From the above, it is seen that the assessee has only eight shareholders out of which six shareholders are having only 10 shares each out of total shares of 72.43 lakhs. It is seen that 90% of holding is with Keventer Projects Ltd. in the shareholding pattern of the assessee company. Now, we have to see the holding company of the assessee Keventer Projects Ltd. which has five companies, their jointly shareholding is at 50.002% and details are as under:*

Sl. No.	Name of listed Companies	Nos.	%
1	M/s. MKJ ENTERPRISES LIMITED	125,030	12.5005%
2	M/s. THE RIGHT ADDRESS LIMITED	125020	12.4995%
3	M/s. MKJ DEVELOPERS LIMITED	125,020	12.4995%
4	M/s. MADANLAL LIMITED	125,020	12.4995%
5	M/s. TWENTY FIRST CENTURY SECURITIES LTD.	30	0.0030%
	<b>Shares held by Listed Cos.</b>	<b>500,120</b>	<b>50.002%</b>

*As narrated above, the assessee claimed carried forward and brought forward losses pertaining to previous years amounting to Rs.43,08,810/- and AO disallowed the same as the assessee is a company, according to him, in which public are not substantially interested. The AO reached to this conclusion for various reasons as narrated by him mainly on account of lack of evidence being filed by assessee in the course of assessment proceedings in support of its claim that five companies which were actually holding 50.0020 shares of Keventer Projects Ltd. are not the companies in which public are substantially interested. Further, the allegation of the AO is that the assessee failed to establish that 89.9895% of its shares were acquired unconditionally by Keventer Projects Ltd. Now before us, Ld. Sr. DR Smt. Sucheta Chattopadhyay, JCIT heavily relied on the assessment order as well as the order of CIT(A). On the other hand, Ld. counsel for the assessee Shri Ravi Tulsiyan argued for assessee company and filed paper book consists of pages 1 to 49. Ld. counsel also stated that all the documents were filed before the lower authorities.*

*5. From the facts narrated by both the sides it is seen that prior to 28.09.2004 assessee company was wholly owned subsidiary of Williamson Magor & Co. Ltd., registered office at 4, Mangoe Lane, Kolkata and assessee has filed the extract of annual report of Williamson Magor & Co. Ltd. for FY 2002-03 and 2003-04 in assessee's paper book at pages 32-39. This clearly shows that the assessee was a 100% subsidiary of the aforesaid company during those years. The assessee has also drawn our attention to the extract of annual report enclosed at assessee's paper book pages 32 to 39, wherein it is clear that the shares of Williamson Magor & Co. Ltd. are listed in various stock exchanges i.e. Calcutta Stock Exchange vide Stock Code No.33013, Guwahati Stock Exchange vide Stock Code No.L/558, Mumbai Stock Exchange vide Stock Code No.519224 and National Stock Exchange. It means that prior to 28.09.2004 assessee was 100% subsidiary of Williamson Magor & Co. Ltd., a company listed and also widely held company i.e. a company in which public are substantially interested in terms of section 2(18)(b)(a) of the Act. It concludes that prior to 28.09.2004, the assessee company was a company in which public are substantially interested. On 28.09.2004, the shareholding of the assessee company was purchased by Keventer Projects Ltd. to the extent of 89.99% i.e. more than 50% shares. From the above chart reproduced, it is clear that more than 50% shares of Keventer Projects Ltd. are held by*

five companies. The assessee has enclosed a list at page 2 of the paper book showing the shareholding pattern of Keventer Projects Ltd., wherein it is stated that all the five companies are quoted with the following stock exchanges:

<u>Name of Listed Companies</u>	<u>Quoted with Stock Exchange</u>
i) MKJ Enterprises Ltd.	Calcutta & Uttar Pradesh
ii) The Right Address Limited	Calcutta
iii) MKJ Developers Ltd.	Calcutta & Uttar Pradesh
iv) Madanlal Limited	Calcutta & Guwahati
v) Twenty First Century Securities Ltd.	Delhi & Uttar Pradesh

These details in respect to market quotation of the aforesaid five companies at the relevant stock exchanges as on 31.03.2005 are enclosed at pages 8 to 14 of assessee's paper book. It means that the aforesaid five companies are listed companies with the Stock Exchanges as narrated above as required u/s. 2(18)(b)(c) of the Act and, therefore, it was argued on behalf of assessee that they are widely held companies on which section 2(18)(b) of the Act is applicable. Since more than 50, exact 50.0020% shareholding of Keventer Projects Ltd. are held by aforesaid five companies, companies in which public are substantially interested, it was argued, that Keventer Projects Ltd. is also a widely held company to which section 2(18)(b) is applicable. Once this is the position, whether the assessee company, whose shares, more than 50% were held by Keventer Projects Ltd., the assessee company can be held to be a company in which public are substantially interested or it can be concluded that the assessee is a widely held company in terms of section 2(18)(b) of the Act or not.

6. We have gone through the order of CIT(A) and find that the CIT(A) upheld the action of AO by observing as under:

"4. I have carefully considered the observations of the Assessing Officer in the assessment order and submissions of the assessee dated 16.12.2008 and 28.6.2001. The Assessing Officer has held that there a change in the share holding for more than 51% of the Company during the previous year and the public are not substantially interested in the company. He further held that as per section 2(18)(b)(B)(c) the assessee company cannot be held as a company in which the public are substantially interested. The assessee was a wholly owned subsidiary of M/s Williamson Magor & Company Ltd., Kolkata. There was a change in the share holding on 28.9.2004 and major share holding (90%) of the assessee was purchased by M/s Keventer Projects Ltd which was not a listed company. However, as per the assessee the shares of M/s Keventer Projects Ltd are held by 11 persons out of whom following share holding companies are claimed to be listed company.

Sl. No.	Name of listed Companies	Nos.	%
1	M/s. MKJ ENTERPRISES LIMITED	125,030	12.5005%
2	M/s. THE RIGHT ADDRESS LIMITED	125020	12.4995%
3	M/s. MKJ DEVELOPERS LIMITED	125,020	12.4995%
4	M/s. MADANLAL LIMITED	125,020	12.4995%
5	M/s. TWENTY FIRST CENTURY SECURITIES LTD.	30	0.0030%
	<b>Shares held by Listed Cos.</b>	<b>500,120</b>	<b>50.002%</b>

5. M/s Williamson Magor & co. was a listed company while M/s Keventer Projects Ltd. is not a listed company. Twenty First Century Securities Ltd. which is one of the share holding company and is taken as listed company is holding only 30 shares out of

10,00,200 shares. None of the 5 claimed listed company is listed either in Bombay Stock Exchange or National Stock Exchange while M/s William Magor & Co. was listed company at both Bombay Stock Exchange and National Stock Exchange. The assessee has no where produced the evidence that the shares of these five (5) listed companies were being quoted in the cash section in routine, there were any fluctuations in the price of shares, sale/purchase transactions were being entered frequently and/or reported in the stock exchange regularly on daily/weekly basis or periodically etc.

6. The share holding of M/s Portside Estates Limited i.e. appellant is as follows:

Sl. No.	Shareholder's Name	Folio No.	Nos.	% of total
1	Mr. M.K. Jalan & Keventer Projects Ltd.	25	10	0%
2	Mrs. S.P. Jalan & Keventer Projects Ltd.	26	10	0%
3	Mr. Mayank Jalan & Keventer Projects	27	10	0%
4	Mr. Ratanlal Sethia & Keventer Projects Ltd.	28	10	0%
5	Mr. Sanjay Gupta & Keventer Projects	29	10	0%
6	Mr. Radhe Shyam Khetan & Keventer Projects Ltd.	30	10	0%
7	Keventer Projects Ltd.	31	6,517,940	90%
8	Manoharlal Phoolchand Kanungo	32	725,000	10%
<b>Total :</b>			<b>7,243,000</b>	<b>100%</b>

7. M/s Portside Estates Limited has only 8 share-holders out of which 6 share holders have only 10 shares each out of a total 72,43,000 shares. The assessee is a subsidiary company of a company, which is also not listed. Further, the holding company of the assessee i.e. M/s Keventer Projects Ltd. has 5 (five) companies who jointly holds 50.002% share holding and are claimed to be listed in Stock Exchange(s). The law provided in sec 2(18)(b)(B)(c) does not apply as the assessee does not have a subsidiary company which is a listed company. It is clarified that there is no subsidiary company of M/s Portside Estates Limited which is listed. The assessee itself is a subsidiary company of M/s Keventer Projects Ltd. which is also not a listed company. While M/s Keventer Projects Limited has 11 share holders with none of them having even 13% share holding. The Section 2(18)(b)(B)(c) provides exception only for any company and not group of companies in aggregate/combination to hold more than 50% shares as listed holding company(ies). This chain cannot go on till at last some companies as a group are found to be listed companies for making it as an exception to section 79.

8. M/s Keventer Projects Limited is a holding company and further there are shareholding companies of M/s Keventer Projects Limited who are claimed to be listed companies. The five holding companies of one of the holding company of the appellant are claimed to be listed, while the provisions require that the immediate subsidiary company to be a listed company. The requirements of section 2(18)(b)(B)(c) are not fulfilled/complied by the appellant. There is a further requirement that the whole of share capital of such subsidiary company has to be held by the parent company, which is also not being fulfilled by the assessee. The so called five (5) listed companies hold only 50% shares of M/s Keventer Projects Limited and M/s Keventer Projects Limited further holds only 90% shares of the appellant and not whole of the share-capital. Therefore, the appellant does not fulfill the conditions and requirements of section 2(18)(b)(B)(c) in terms of having a listed and wholly owned subsidiary.

9. If it is considered for the sake of argument that section 2(18)(b)(B)(c) is applicable to the five listed companies i.e. M/s. MKJ Enterprises Limited; M/s The Right Address Limited; M/s MKJ Developers Limited M/s. Madanlal Limited; M/s Twenty First

*Century Securities Limited then these do not own the whole capital of M/s. Keventer Projects Ltd. Therefore, the conditions of section 2(18)(b)(B)(c) are not fulfilled to recognise M/s. Keventer Projects Ltd. as a company in which public are substantially interested under section 2(18)(b)(B)(c). Therefore, M/s. Keventer Projects Ltd. being a holding company cannot give further status to the appellant i.e. M/s Portside Estates Limited of a company in which public are substantially interested under section 2(18)(b)(B)(c). Further also M/s. Keventer Projects Ltd. holds only 90% share- holding and not whole capital of the appellant thereby not fulfilling this condition of section 2(18)(b)(B)(c).*

*10. The change of share holding of the assessee from M/s Williamson Magor Ltd. to M/s. Keventer Projects Ltd. has a change of share holding for more than 51% as required in section 79 and it also does not fall under explanation of the Section 2(18)(b)(B)(c) on various counts as discussed in detail (supra). Therefore, it is held that the appellant is not entitled to set off the brought forward loss of Rs. 43,08,810/- as calculated by the Assessing Officer in the assessment order. It is clarified that no brought forward loss up to assessment year 2004-05 is allowed to be set off with the income of assessment year 2005- 06. Therefore, the grounds of appeal no. 3 & 7 are dismissed while the other grounds have been discussed as facts in the order and none of these grounds allow the assessee to carry forward the loss. In the result the assessee is not allowed to set off the carry forward loss of Rs.64,79,715/- with its business income.”*

*7. We find that prior to 28.09.2004 the assessee company was wholly owned subsidiary of Williamson Magor & Co. Ltd. as is evident from extract of annual report of Williamson Magor & Co. Ltd. for FY 2002-03 and 2003-04 which clearly shows that the assessee was a 100% subsidiary of this company during those years. It is also a fact that Williamson Magor & Co. Ltd. is listed in several stock exchanges as narrated in the above facts with evidence. Prior to 28.09.2004, the assessee company remained a 100% subsidiary of Williamson Magor & Co. Ltd., which is a listed and widely held company. From the above, it follows that before acquisition of the assessee company by Keventer Projects Ltd. on 28.09.2014 the assessee remained a company in which public are substantially interested. On 28.09.2004, the shareholding of the assessee company was purchased by Keventer Projects Ltd. to the extent of 89.99% and 50.200% of that are held by the companies namely, (i) MKJ Enterprises, (ii) The Right Address Ltd., (iii) MKJ Developers Ltd., (iv) Madanlal Ltd. and (v) Twenty First Century Securities Ltd. All the aforesaid companies are quoted in the Stock Exchanges as narrated above and evidences are filed in assessee’s paper book as discussed above. The assessee has also filed list showing the market quotations of the aforesaid five companies who have invested in Keventer Projects Ltd. showing market quotation at the relevant stock exchanges as on 31.03.2005 and 31.03.2006. From this, it is clear that the above stated five companies are listed companies as required u/s. 2(18)(b)(A) of the Act and, therefore, safely can be presumed that they are widely held companies on which this section applies. Since more than 50% of shareholding of Keventer Projects Ltd. are held by above stated five companies, which are established companies in which public are substantially interested and in such situation it amply follows that Keventer Projects Ltd. is also a company in which public are substantially interested. But the CIT(A) upheld the action of AO on the following points:*

*i) According to him, the provisions of section 2(18)(b)(B)(c) does not apply to the facts of the assessee’s case as a subsidiary company is not a listed company. For this, he gave reasoning that, “the law provided in section 2(18)(b)(B)(c) does not apply as the assessee does not have a subsidiary company which is a listed company. This clarifies*

that there is no subsidiary company of M/s. Portside Estates Ltd. which is a listed company. The assessee itself is a subsidiary company of M/s. Keventer Projects Ltd. which is also not a listed company. While M/s. Keventer Projects Ltd. has 11 shareholders with none of them having even 13% of shareholding”.

ii) The CIT(A) was of the view that the five holding companies of which one of the holding companies of the assessee are claimed to be listed while the provision requires that the immediate subsidiary company to be listed company. According to CIT(A), “section 2(18)(b)(B)(c) provides exception only for any company and not group of companies in aggregate/combination to hold more than 50% shares as listed holding companies. According to him, this chain cannot go on till at last some companies as a group are found to be listed companies for making it as an exception to section 79 of the Act.” According to him, the requirement of the section is that whole of the share capital of such subsidiary company has to be held by parent company which is not fulfilled by the assessee company. The so-called five listed companies held only 50% shares of Keventer Projects Ltd. and in turn Keventer Projects Ltd. further holds only 90% shares of the assessee and not the entire share capital. CIT(A) further noted that this provision provides exception only for any company and not group companies in aggregate/combination to hold more than 50% shares as a listed holding company.

iii) He further held that none of the aforementioned five companies are listed on any of the Stock Exchanges unlike Williamson Magor & Co. Ltd. The finding of CIT(A) is not based on facts as the facts speak something else that the aforesaid five companies are listed companies and, therefore, can safely be presumed as widely held companies on which this provision will apply because the assessee has filed complete details showing market quotation of the aforesaid five companies at the relevant stock exchanges as on 31.03.2005 and 31.03.2006.

8. Further, on the basis of above facts and as arguments made by both the sides, now, we have to go to the provisions of sections 79 and 2(18)(b) of the Act and the relevant provisions read as under:

“Sec. 79, Carry forward and set off of losses in the case of certain companies:

*Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless-*

- (a) *on the last day of the previous year the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. Of the voting power on the last day of the year or years in which the loss was incurred:*

*[Provided that nothing contained in this section shall apply to a case where a change in the said voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift:]*

*Provided further that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent. Share holders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.”*

*“Section 2(18). Company in which the public are substantially interested --A company is said to be a company in which the public are substantially interested –*

*(b) if it is a company which is not a private company as defined in the Companies Act, 1956 (1 of 1956), and the conditions specified either in item (A) or in item (B) are fulfilled, namely.*

*(A) shares in the company ( ..... ) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made there under;*

*(B) shares in the company ( ..... ) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—*

*(a) the Government, or*

*(b) a corporation established by a Central, State or Provincial Act, or*

*(c) any company to which this clause applies or any subsidiary company of such company [if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.]”*

*From the above provisions of section 79 it is clear that this is applicable where a change in shareholding has taken place in a previous year in the case of a company but there is one exception that it excludes a company in which public are substantially interested. It means that section 79 is very clear on the facts of the case.*

*9. The provisions of section 2(18)(b)(B) of the Act clearly reveals that this provision is in two parts. The requirement of sub clause (c) could be fulfilled either by any company to which this clause applies or any subsidiary company of such company where such subsidiary company fulfills the conditions laid down in clause (b) of section 2(18) of the Act by virtue of being a company in which public are substantially interested or a widely held company. It would be sufficient if not less than 50% of the shares of the assessee company have been allotted unconditionally to or acquire unconditionally by and held throughout the relevant previous year by a holding company, which is a company in which public are substantially interested and to which this provision applies. Alternatively, the condition could also be fulfilled if more than 50% of shares have been allotted or acquired by any subsidiary company of such company where such subsidiary company fulfills the conditions laid down in this provision and which is a company in which the public are substantially interested. Sub clause (c) in section 2(18)(b)(B) of the Act have two parts and both are separate and independent of each other. We find that the CIT(A) while interpreting sub-clause (c) of section 2(18)(b)(B) of the Act holds that the provision of the section to assessee’s case is not applicable and according to him, the reason is that since the same does not have a subsidiary company, which is a listed company. Here, we want to mention that CIT(A) completely ignored the fact that there will be sufficient compliance of section 2(18)(b)(B)(c) of the Act where not less than 50% of shares of the assessee company have been allotted unconditionally to or acquired unconditionally by and held throughout the relevant previous year by any company which is a company in which public are substantially interested and in turn this clause will apply. In the present case 89.90% of shares of the assessee company are held by Keventer Projects Ltd. and Keventer projects Ltd.’s share*

to the extent of 50.002% are held by five listed companies which are company in which public are substantially interested and are widely held companies. This fact is proved by the documentary evidence produced before us in assessee's paper book which were already available before the CIT(A). Further, CIT(A) held that the aforesaid five holding companies of one of the holding companies of the assessee are claimed to be listed yet, the required provisions are not fulfilled for the reason that the provision requires that the immediate subsidiary company is to be a listed company. In our view, the interpretation of the provision is not like this. The requirement is that the aforesaid five holding companies of one of the holding company are listed companies with the stock exchanges and are companies in which public are substantially interested and are widely held companies. The first requirement for fulfilling of sub-clause (c) of section 2(18)(b)(B) of the Act is where not less than 50% of shares of the assessee company have been allotted unconditionally to or acquire unconditionally by and held throughout the relevant previous year by holding company to which this clause applies. In the present case, the first condition stands satisfied for the reason that the holding company Keventer Projects Ltd. which is holding 89.99% shares of the assessee company has been jointly held by the aforesaid five companies which are all established as above are listed in recognised stock exchanges. This makes clear and evident that Keventer Projects Ltd. is a widely held company to which this provision of section 2(18)(b)(B)(c) is applicable and assessee is a widely held company or a company in which public are substantially interested.

10. Another conclusion arrived at by CIT(A) that section 2 (18)(b)(B)(c) provides exception only for any company and not group of companies in aggregate/group held more than 50% shares as listed subsidiaries. We are of the view that the word 'any' which is of utmost importance is to be taken into consideration. The term 'any' has been defined in the The Law Lexicon by P. Ramanatha Aiyar, 2<sup>nd</sup> Edition, 1997 at page no. 117 as 'one or same or all'. The word 'any' has been referred in the case of Bengal Chamber of Commerce Rules of Tribunal of Arbitration which means one or more out of several and includes all. This has been decided in the case of Satyanarayan Biswanath Vs. Harakchand Rupchand, AIR 1955 Cal 225. Further, while dealing with the Bihar Panchayat Election Rules, 1959, Hon'ble Patna High Court in the case of Ashiq Hassan Vs. SDO, AIR 1965 Patna 446, wherein it was held that the word 'any' means 'all'. Even the Dictionary of Oxford, the word 'any' has been taken to be meaning as 'all'. In view of the above, the meaning of the word 'any' includes 'all' and the word any company as contained in sub-clause (c) essentially denotes more than one company and not only one company. Here all the five companies in aggregate are holding more than 50% shares are listed subsidiary companies of the holding company of the assessee company. Here the issue is settled by Hon'ble Gujarat High Court in the case of CIT Vs. Emtici Engineering Ltd. (2009) 310 ITR 0266, wherein the principle laid down was as under:

“Upon careful reading of sub-clause (c) in section 2(18)(b)(B) of the Act, it would emerge that the same is in two parts. The requirements of subclause (c) could be fulfilled either by any company to which this clause applies or any subsidiary company of such company where such subsidiary company fulfils the conditions laid down in clause (b) of section 108. It can thus be seen that to fulfil the requirement noted above, it would be sufficient if not less than 50 per cent. of the shares of the assessee-company have been allotted unconditionally to or acquired unconditionally by and held throughout the relevant previous year by a holding company. For company to which this clause applies, alternatively, the condition could also be fulfilled if more than 50 per cent. of the shares have been allotted or acquired by any subsidiary company of

*such company (i.e., any company to which such clause applies) where such subsidiary company fulfils conditions laid down in clause (b) of section 108. The two parts of sub-clause (c) in section 2(18)(b)(B) of the Act, are separate and independent of each other. If the company which is a subsidiary company of the holding company satisfies the requirement of being any company to which this clause applies, it need not thereafter, fulfil the further requirement of being a company the whole of whose share capital has been held by the parent company as provided in section 108(b). In other words, there is nothing in the first part of sub-clause (c) in section 2(18)(b)(B) of the Act, namely, “any company to which this clause applies” which would exclude the company which is a subsidiary of a parent company. Thus, if a company which is subsidiary of a parent company independently fulfils the requirement of being company “to which this clause applies” the requirement of subclause (c) in section 2(18)(b)(B) of the Act stands fulfilled.*

*With this clarity in mind, if one reverts back to the present case, it is an admitted position that between P. B. Investments and Trusts Ltd. and K. B. Investments Ltd., the two companies hold more than 50 per cent. of the share capital of the assessee-company. P.B. Investments and Trusts Ltd. and K. B. Investments Ltd. are companies to which this clause applies as per sub-clause (c) in section 2(18)(b)(B) of the Act. This being the case so far as the assessee-company is concerned, its not less than 50 per cent. Of shares having been unconditionally allotted to P. B. Investments and Trusts Ltd. and K. B. Investments Ltd. together and since P. B. Investments and Trusts Ltd. and K. B. Investments Ltd. are companies to which this clause applies, the assessee-company stands covered within the definition of section 2(18) of the Act. In our opinion, the Tribunal was justified in so holding. We thus answer the question in the affirmative, i.e., against the Revenue and in favour of the assessee.”*

*11. In view of the above facts and circumstances and case law cited above, we decide this issue in favour of the assessee and against revenue. This issue of assessee’s appeal is allowed. This issue of assessee’s appeal in ITA No.182/K/2012 for AY 2006-07 is also allowed.”*

6. It is not in dispute before me that the facts and circumstances and the brought forward loss in the present assessment year relates to the residue of the brought forward loss which was considered in A.Y.2005-06 and 2006-07. Therefore the reasons given by the Tribunal in allowing the set off as claimed by the assessee will equally apply to the present assessment year also. Respectfully following the order of the Tribunal referred to above I direct the AO to allow the claim of the set off of brought forward loss of Rs.3,81,937/-.

7. The other issue raised by the assessee in ground no.3 was also considered by this Tribunal in its order referred to above for A.Y.2006-07. The Tribunal held on the allowability of the legal and professional charges in connection with the renewal of lease and held as follows :-

*“17. The next issue in ITA No. 182/K/2012 for AY 2006-07 is as regards to the order of CIT(A) confirming the action of AO in disallowing legal and professional*

charges by holding the same to be capital in nature. For this, assessee has raised following ground no.3:

“3(a). On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the action of the AO in disallowing the legal and Professional charges of Rs.9,17,450/- incurred in connection with the renewal of Lease/tenancy Agreement by considering the expense to be of capital nature.

3(b). On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the action of the AO in disallowing the Legal & Professional charges of Rs.9,17,450/- incurred in connection with the renewal of Lease/tenancy Agreement, by following the decision of the ITAT, Vishakhapatnam Bench in the case of ACIT vs. Efftronics Systems (P) Ltd. (2011) (133 ITD 460) in preference to the judgment of the Delhi High Court in the case of CIT Vs. Samtel Color Ltd. (326 ITR 425).”

18. Briefly stated facts are that during FY 2004-05 relevant to AY 2005-06 assessee got rights in land situated at 34/1, Diamond Harbour Road, Kolkata and lease rights in Port lands pending renewal belonging to Calcutta Port Trust through the scheme of arrangements vide judgment of Hon'ble Calcutta High Court vide Co. Petition No. 213 of 2003 and another Co. Application No. 132 of 2003 dated 19.05.2004. These statements, facts, papers/documents relating to leasehold rights in land and Port land are already on record of the assessment for AY 2005-06 completed u/s. 143(3) of the Act. The assessee during the relevant AY 2006-07 claimed legal and professional charges amounting to Rs.9,17,450/- for which necessary details including bills and vouchers were filed before the AO. The assessee claimed that these expenses are against the said leasehold property being leasehold/tenancy rights in the immovable property at Port land pending for renewal belonging to Calcutta Port Trust and several legal matters pending before Hon'ble High Court at Calcutta, Delhi and Hon'ble Supreme Court and also at other courts of law in civil matters for and against the assessee company. The assessee contended that in order to protect and safeguard the rights, entitlements and benefits of leasehold property at Port land being the asset of the assessee company, the company has incurred these legal and professional expenses and the same was claimed as business expenses. The AO treated these expenses as capital expenditure for the reason that these expenses produce enduring benefits for several previous years and he disallowed the same. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO vide para 11 of the appellate order as under:

“11. In view of the judgment of the Hon'ble ITAT, Vishakhapatnam Bench the expenses on lease of property can also be capital in nature although incurred for the renovation of property. The assessee has incurred an expenditure on the protection of the title which will last for another 50 years, the benefit is of an enduring and capital in nature also being incurred for the title of the property. Therefore, this ground of appeal is dismissed and the order of the Assessing Officer is upheld.”

Aggrieved, now assessee is in appeal before us.

19. We have heard rival submissions and gone through facts and circumstances of the case. The assessee has filed complete details of legal and professional charges paid in connection with settling the disputes and regularising its leasehold rights in the above property. Thus it is clear that the expenditure on account of legal and

*professional charges was incurred only to safeguard its interest in the leasehold property, the rights of which were already transferred in favour of the assessee pursuant to the sanction of scheme of merger was indeed in the nature of revenue expenditure since same was made in the course of carrying on the business of the assessee company. It is also a fact that the assessee has not acquired any new asset by virtue of this expenditure and once this is the case the expenses are allowed as revenue expenditure. This issue of assessee's appeal is allowed.*

8. It is not in dispute before me that the legal and professions charges disallowed in the present assessment year by the revenue authorities relates to the same lease hold rights of the assessee in Port lands. Therefore the decision rendered by the Tribunal in A.Y.2006-07 will equally apply in the present assessment year also. Following the decision of the Tribunal in assessee's own case for A.Y.2006-07, I direct the AO to allow the claim of the assessee for deduction of Rs.11,93,700/- incurred in connection with the renewal of the lease.

9. In the result the appeal of the assessee is allowed.

**Order pronounced in the Court on 02.09.2016.**

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 02.09.2016.

[RG PS]

Copy of the order forwarded to:

1.M/s. Portside Estates Ltd., Sagar Estate, 3<sup>rd</sup> Floor, Unit-1, 2, Clive Ghat Street, Kolkata-700001.

2. A.C.I.T., Circle-5, Kolkata.

3. CIT(A)-VI, Kolkata. 4. CIT-II, Kolkata.

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches