

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
 (समक्ष)Before श्री पी.एम .जगताप, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
 [Before Shri P. M. Jagtap, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 979/Kol/2015**  
**Assessment Year: 2011-12**

Stewart Holl (India) Ltd. (PAN: AAEC3091C)	Vs.	Deputy Commissioner of Income-tax Circle-4(2), Kolkata
Appellant		Respondent

Date of Hearing	20.12.2017
Date of Pronouncement	07.03.2018
For the Appellant	Shri P. N. Rajendran, AR
For the Respondent	Shri Pinaki Mukherjee, Addl. CIT

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-2, Kolkata dated 23.02.2015 for AY 2011-12.

2. The only issue to be decided in this appeal of assessee is as to whether the ld CITA was justified in upholding the applicability of section 33AB(7) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) against the assessee in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee’s main business activity is cultivation of tea, manufacturing of tea from leaves procured from own garden as well as from bought leaves and also trading of tea. The AO observed from the Tax Audit Report of the assessee wherein the tax auditor had reported that there was unutilized amount out of withdrawals from NABARD deposit account to the tune of Rs 1,49,82,251/- which was not utilized before 31.3.2011 for its intended purpose. Accordingly, the AO added the same as deemed income of the assessee u/s 33AB(7) of the Act. The assessee submitted that it had

withdrawn an amount of Rs 5,32,75,100/- from NABARD during the previous year ended 31.3.2011 relevant to Asst Year 2011-12 as under:-

Date of withdrawal	Amount of withdrawal (Rs.)
13.05.2010	1,54,41,900
03.06.2010	20,98,100
10.09.2010	18,53,700
18.01.2011	<u>3,38,81,400</u>
Total:	<u>5,32,75,100</u>

The assessee submitted that the said amount was made use of it in the same financial year on the basis of placing the orders within the financial year and an aggregate sum of Rs 3,82,92,849/- was also paid before 31.3.2011. The orders for procurement of various machineries such as conveyor, VFBD, Fermentor, Tea Roller, Electrification and weighier were placed before the end of the previous year and proforma invoice obtained from the concerned suppliers. The assessee also stated that advance amounts were also paid as per the terms of the orders and since there is always a time gap between placing of orders and actual delivery of the machineries and its installation, it had spread over the next year. The assessee further submitted that the deficit figure of Rs. 1,49,82,251/- ( Rs.5,32,75,100 – Rs.3,82,92,849) had been duly spent by the assessee on or before the due date of filing the return of income u/s 139(1) of the Act. It was further submitted that the utilization has been made in accordance with the Tea Development Scheme 2007. Accordingly pleaded that the provisions of section 33AB(7) of the Act uses the expression ‘being utilized’ and since the utilization process had started well before 31.3.2011 by the assessee by way of placing orders to the suppliers and making substantial payments towards advances, the said provisions mandating the utilization of the withdrawal amounts need to be interpreted liberally and not strictly. It is also the case of the assessee that in case if the provisions of section 33AB(7) of the Act are viewed strictly, then the deduction originally granted at the time of making deposit in NABARD in earlier years would get withdrawn partially even though the assessee had utilized the withdrawn amount from NABARD deposit in accordance with the Tea Development Scheme 2007. Hence, the Ld. AR argued that it cannot be the intention of the legislature to deny the benefit of deduction and as per him, the action of the AO in treating the unutilized portion as deemed income of the assessee u/s 33AB(7) of the Act should not be sustained. According to Ld. AR, the Id CITA however did

not heed to these contentions of the assessee and upheld the action of the Id AO. Aggrieved, the assessee is in appeal before us on the following grounds:-

*“1. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in law in rejecting the claim of deduction of Rs.1,49,82,251/- utilized in accordance with the Tea Board Scheme (the Scheme) out of Rs.3,38,81,400/- withdrawn from NABARD on 18/01/2011 in the immediately following accounting year before the due date for filing the return u/s 139(1) of the Income Tax Act, 1961 (the Act) without applying his mind to the legislative history of enacting section 33AB of the Act and the Scheme and confirming Rs.1,49,82,251/- added to the profit as deemed income u/s 33AB(7) of the Act by the Assessing Officer in applying the ratio of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Anand Theatres (244 ITR 192) and thereby holding that the provision of section 33AB(7) is unambiguous.*

*2. That on the facts and in the circumstances of the case the Ld. CIT(A) ought to have held that section 33AB being a provision for granting incentive to promote the growth and development of tea industry be construed liberally and the restriction on it be construed to advance the objective of the provision and not to frustrate it and accordingly he should have deleted Rs.1,49,82,251/- utilized in accordance with the Scheme as deemed income of the previous year.*

*3. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in law in placing literal interpretation to the expression "not utilised within that previous year" and not applying the rule of reasonable construction to give effect to the true objective of section 33AB and confirming the addition of Rs.1,49,82,251/- as deemed income.*

*4. That the appellant craves leave to add, alter, amend, cancel, supplement or otherwise modify the grounds stated above, before or at the hearing of the appeal as it may deem fit.”*

4. We have heard the rival submissions. We find that the assessee had been given deduction u/s 33AB of the Act in the earlier year at the time of making deposit in NABARD. The assessee is mandated to withdraw the amounts lying in NABARD deposit and utilize the same for further manufacturing and growing of tea in accordance with the manner provided in Tea Development Scheme, 2007. Such utilization is mandated to be done within the end of the previous year in which withdrawal was made from NABARD deposit in terms of section 33AB(7) of the Act. For the sake of convenience, the provisions of section 33AB(7) of the Act are reproduced :-

*Tea development account<sup>22</sup>[,coffee development account and rubber deve-lopment account].*

*<sup>23</sup> 33AB. ....*

*(7) Where any amount, standing to the credit of the assessee in the special account<sup>37</sup>[or in the <sup>38</sup>[\*\*\*] Deposit Account], which is released during any previous year by the National Bank<sup>37</sup>[or which is withdrawn by the assessee from the <sup>38</sup>[\*\*\*] Deposit Account] for being*

*utilised by the assessee for the purposes of such business in accordance with the scheme<sup>37</sup>[or the deposit scheme] is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year :*

***Provided*** that this sub-section shall not apply in a case where such amount is released during any previous year at the closure of the account in circumstances specified in clauses (b), (c) and (e) of sub-section (3).

4.1. The assessee in the instant case had withdrawn Rs 5,32,75,100/- from NABARD deposit during the previous year ended 31.3.2011. It had utilized a sum of Rs 3,82,92,849/- before 31.3.2011 in accordance with Tea Development Scheme, 2007. It is not in dispute that it had placed orders for procurement of various machineries and assets such as conveyor, VFBD, Fermentor, Tea Roller, weigher and for electrification etc before 31.3.2011 and had obtained proforma invoices from various suppliers/services in tune with the orders placed. It is not in dispute that the assessee had paid some advances also to various suppliers before 31.3.2011 towards the purchase of aforesaid assets, which is already included in the utilization figure of Rs 3,82,92,849/- above. It is not in dispute that the unutilized portion of Rs 1,49,82,251/- has been utilized by the assessee before the due date of filing the return of income u/s 139(1) of the Act. Though there is no relevance for the due date of filing the return of income u/s 139(1) of the Act as far as the utilization of withdrawn amounts are concerned, the same is mentioned here only to drive home the fact that the unutilized portion has been duly utilized by the assessee within a reasonable period after the end of the previous year. It is not in dispute that the entire utilization has been made in accordance with the Tea Development Scheme, 2007. Hence there is no diversion of funds for non-business purposes or for purposes other than those mentioned in the Tea Development Scheme, 2007. The revenue had taxed the unutilized portion of Rs 1,49,82,251/- as deemed income of the assessee by strictly interpreting the provisions of section 33AB(7) of the Act. This would lead to a situation where, the assessee having been given deduction in earlier year at the time of making deposit in NABARD, and had withdrawn the amounts thereon in subsequent years from NABARD deposit and utilized the same in the manner provided in Tea Development Scheme, 2007 with some delay (i.e. utilization had happened partly after the end of the previous year in which withdrawal was made) , but still would be fastened with tax liability by way of deeming fiction provided in

section 33AB(7) of the Act, then , it tantamounts effectively to withdrawal of the deduction granted in earlier years to the assessee , inspite of proper utilization of the funds by the assessee. We find that the provisions of section 33AB of the Act was introduced with a view to encouraging persons engaged in the business of growing and manufacturing tea in India to mobilize resources internally for specified purposes.

4.2. We also find that similar provisions were made in the statute u/s 32AB of the Act which was not applicable from Asst Year 1991-92 onwards. Sub-section (6) of section 32AB of the Act contained a similar provision to section 33AB(7) of the Act. For the sake of convenience, the erstwhile provisions of section 32AB(6) of the Act are reproduced below:-

***Investment deposit account***

***Section 32AB. ....***

*(6) Where any amount, standing to the credit of the assessee in the deposit account, released during any previous year by the Development Bank for being utilized by the assessee for the purposes specified in the scheme or at the closure of the account [[in circumstances other than the circumstances specified in clauses (b), (c ) and (e) of sub-section (5A)], is not utilized in accordance with [and within the time specified in,] the scheme, either wholly or in part, [\*\*\*] the whole of such amount or, as the case may be, part thereof which is not so utilized shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.*

4.2.1. The scope and effect of the amendments made in section 32AB of the Act by the Finance Act, 1987 (11 of 1987) , have been elaborated in the following portion of the departmental circular no. 495 dated 22.9.1987 as under:-

***FINANCE ACT, 1987***

***Modification of provisions relating to investment deposit account***

***20.1. ....***

***20.2. ....***

***20.3.***

***20.4.***

***20.5.***

***20.6.***

***FINANCE ACT, 1987***

*20.7 Section 32AB(6) lays down the any amount withdrawn by an assessee from his account with the Development Bank but not utilised in accordance with the scheme during the previous year will be treated as income of the year during which the withdrawal was made. There may be a situation where an assessee withdraws the amount and utilises the same in accordance with the scheme for specified purposes within the period permitted by the scheme but a part of such period may fall in the next accounting year. In such cases, the effect of the existing provisions is that though an assessee has utilised the amount in accordance with the scheme, the amount will be added to the assessee's income in the year in which the withdrawal is made. To remove this anomaly, the Amending Act, 1987 has clarified [section 32AB(6)] that in a case where the amount withdrawn has been utilised for the specified purpose within the period specified in the scheme, such amount would not form part of the income of the assessee in the previous year in which the amount has been withdrawn.*

*(Underlining provided by us)*

***FINANCE ACT, 1987***

*20.8 The utilisation of the amount withdrawn is permitted in accordance with the provisions of section 32AB and the scheme framed thereunder for the purpose of purchasing a "new ship" or "new aircraft" or "new machinery or plant". These expressions have been defined in the Explanation to section 32(1)(vi) of the Income-tax Act which has been deleted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, with effect from 1-4-1988. As a consequence, the Amending Act has amended section 32AB by including the definition of the expressions "new ship", "new aircraft" and "new machinery or plant" in the section itself.*

***FINANCE ACT, 1987***

*20.9 These amendments will come into force with effect from 1st April, 1987, and will, accordingly, apply to the assessment year 1987-88 and subsequent years.*

Para 20.7 of the aforesaid circular clearly addresses the issue under dispute before us. We find that the provisions of section 32AB (6) and section 33AB(7) are similarly worded in both letter as well as in spirit. It is not in dispute that the assessee in this case before us had utilized the withdrawals from deposit account within the specified time prescribed under the scheme. Though the abovementioned circular was issued for section 32AB(6) of the Act, the analogy given thereon could be used for section 33AB(7) of the Act also in view of similar words used in the statute and since the purpose behind both the sections remain the same. We also find that the legislature had provided for adequate precautions in the section 33AB of the Act itself that in case if the amounts lying in deposit account remains unutilized by the assessee for specified purposes as provided in the Tea Development Scheme, 2007, then the outstanding amounts would be brought to tax as deemed income of the assessee on closure of the business. No assessee would keep its funds blocked in a specified deposit account yielding lesser interest rates as compared to market rates, without using the same for specified purposes. The amounts lying in deposit would remain

unutilized only in the event of assessee deciding to wind up its operations. Similarly if the new assets acquired out of utilization of withdrawals from deposit were sold within 8 years of its acquisition, then the deduction earlier granted would be withdrawn. Hence we find that adequate precautions has been provided in the statute to take care of various situations. Hence by giving the purposive interpretation of the section 33AB(7) of the Act and by linking the same to the facts of the case before us, since the assessee had actually utilized the withdrawn amounts for intended purposes with a slight delay which got spread over next accounting year, the entire spirit of the requirements of the section 33AB(7) of the Act has been fulfilled by the assessee.

4.3. It is trite law that an incentive provision should be construed liberally. Reliance in this regard is placed on the decision of *Hon'ble Supreme Court in the case of Bajaj Tempo Ltd vs CIT reported in 196 ITR 189 (SC)* wherein it was held that :-

*“ A provision in a taxing statute granting incentives for promoting growth and development should be construed liberally; and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it.”*

4.3.1. Similarly the *Hon'ble Supreme Court in the case of CIT vs Gwalior Rayon Silk Manufacturing Co. Ltd reported in 196 ITR 149 (SC)* wherein it was held :-

*It is equally settled law that if the language is plain and unambiguous one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless tax laws have to be interpreted reasonably and in consonance with justice adopting purposive approach. The contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee. The object being that in computation of the net income, the statute provides deductions, exemptions or depreciation of the value of the capital assets from taxable income. Therefore, building which have not been specifically defined to include road in the Act must be taken in the legal sense.*

4.3.2. The *Hon'ble Supreme Court in the case of CIT v. J.H. Gotla reported in 156 ITR 323 (SC)* had held :-

*"If the purpose of a particular provision is easily discernible from the whole of the scheme of the Act which in this case, is to counteract the effect of transfer of assets so far as computation of income of the assessee is concerned, then bearing that purpose in mind, we should find out the intention from the language used by the legislature and if strict literal construction leads to an absurd result, i.e., result not intended to be subserved by the object of the legislation found in the manner indicated before, then another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction."*

4.3.3. We hold that a provision in a taxing statute granting incentives for promoting growth and development should be construed liberally and since a provision for promoting economic growth has to be interpreted liberally, the restriction on it too has to be construed so as to advance the objective of the provision and not to frustrate it as held by the Hon'ble Supreme Court in *Bajaj Tempo Ltd.* (supra). We also hold that though equity and taxation though are strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction. A statutory provision is to be interpreted *ut res magis valeat quam pereat*, i.e to make it workable rather than redundant. Applying this legal maxim, it would be just and fair to hold that the assessee, having utilized the amounts withdrawn from NABARD deposit for its intended purposes should not be fastened with tax liability on deemed income basis, merely because it had not utilized the entire amounts withdrawn before 31.3.2011 (i.e within that previous year) but before filing of return. We further take note of the fact that in case if the assessee is taxed on deemed income basis in this year for non-utilisation of withdrawals within that previous year, then the assessee would never get any deduction in subsequent years also for this utilized amount. This would in effect result in withdrawal of deduction in part earlier granted to the assessee at the time of making deposit with NABARD and frustrate the incentive scheme framed for Tea growers and manufacturers.

4.4. The provisions of section 33AB (7) of the Act uses the expression 'being utilised'. It is not in dispute that the amount withdrawn by the assessee from NABARD was for utilisation as per Tea Development Scheme of 2007 and the assessee had in fact placed orders for acquisition of various machineries that are required for setting up of new units to be engaged in growing and manufacturing of tea i.e acquisition for machineries /specified purposes as envisaged in para 9(a) to (k) of the Scheme. It is not in dispute that the assessee had paid substantial portion of the proforma invoice value as advance before

31.3.2011 and had included the same in the utilization statement before 31.3.2011 which clearly indicates its intention of utilizing the withdrawals from NABARD deposit accounts. Hence the purpose for which the provision has been made by the legislature has been satisfied by the assessee in this case before us.

4.5. In view of the aforesaid findings in the facts and circumstances of the case and in view of the judicial precedents relied upon hereinabove for interpretation of statutes, we hold that the action of the revenue in bringing to tax the deemed income in terms of section 33AB(7) of the Act deserves to be deleted. Accordingly, the grounds raised by the revenue are allowed.

5. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 07.03.2018

Sd/-  
(P. M. Jagtap)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 7th March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Stewart Holl (India) Ltd., Camelia House, 14 Gurusaday Road, Kolkata-700 019..
2. Respondent – DCIT, Circle-4(2), Kolkata
3. The CIT(A) Kolkata.
4. CIT Kolkata
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary