IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.225 OF 2002

Hindustan Export & Import Corporation Private Limited,
a company registered under the Companies Act, 1956 and having its registered office at 348 Anand Bhavan, Dr. D.Naoroji Road, Mumbai-400 001 **…Appellant**

Versus

1. **The Deputy Commissioner of Income-tax,** Special Range 4, having his office at Aayakar Bhavan, Maharshi Karve Road, Mumbai-400 020.

2. **The Commissioner of Income-tax,** City IV, Mumbai, having his office at Aayakar Bhavan, Maharshi Karve Road, Mumbai-400 020. **…Respondents**

Mr. J.D.Mistri, Senior Advocate with Mr. Fenil Bhatt and Mr. Prem Tripathi i/by Mr. Atul K.Jasani, for Appellant.
Mr. P.C.Chhotaray, with Ms. Sangita Choure, for Respondents-Revenue.

CORAM	:	**K. R. SHRIRAM & DR. NEELA GOKHALE, JJ.**
RESERVED ON	:	**15th APRIL 2024**
PRONOUNCED ON	:	**7th MAY 2024**

JUDGMENT: (*Per Dr. Neela Gokhale, J.)*

1. At first blush, the question of law that arises for determination appears to involve a complex interpretation of Section 80-0 of the Income Tax Act, 1961 ("**the Act**") and the effect of an amendment to that Section. But a closer scrutiny whittles down the provision and

prevails upon us to dismiss the Appeal on the basis of a straightforward application of the rules of interpretation. We now proceed straightaway to give a short narration of circumstances giving rise to the controversy before us.

2. By an order dated 17th September 2004, this Appeal was admitted on the following substantial questions of law:

> "*1. Whether on the facts and in the circumstances of the case and in law the Tribunal ought to have deleted the levy of interest under Section 234B of the Act ?*
>
> *2. Whether on the facts and in the circumstances of the case and in law the Tribunal ought to have allowed the deduction under section 80-0 of the Act?"*

In view of the decision of the Supreme Court in the case of ***Manasarovar Commercial (P) Ltd. v. CIT***[1], the first question is answered in favour of the Revenue and is not pressed by Appellant. Hence, the determination is limited to the second question only.

3. Appellant is a private limited company. An agreement was executed on 2nd February 1987 (the said agreement) by and between Appellant and M/s. Arianespace France ("**Arianespace**"), the shareholders of which, it is stated, are all Government controlled companies belonging to European Space Agencies and totally unconnected with Appellant. The main business of Arianespace was to launch satellites and place them in orbit above the earth. In a bid to gain entry into the global satellite launch market, Arianespace was

1 (453) ITR 661

desirous of reducing its cost by placing bulk orders on its subcontractors on the basis of information about launch business worldwide, collected from their international network of consultants. It is Appellant's case that it was one such consultant of Arianespace appointed pursuant to the said agreement. The agreement was revised and extended on 10th December 1987, 20th February 1990 and 12th March 1993. As per the latest agreement, Appellant was obliged to provide information to Arianespace regarding current regulations and market conditions in India. A lumpsum consideration was agreed and was revised upwards from time to time. The duration of the last agreement was upto 31st December 1996. It is also Appellant's case that the information required to be sent in terms of the agreement was sent to Arianespace regularly by post and; assessments and analysis were discussed orally at personal meetings with representatives of both sides to maintain confidentiality of information.

4. Appellant received a sum of Rs.75,11,850/- (equivalent to US$ 240,000) from Arianespace during the relevant year being AY 1995-96. After deducting 20% towards expenditure, Appellant claimed deduction of Rs.30,40,740/- under Section 80-0 of the Act in its return of income filed for AY 1995-96. The Assessing Officer ("**AO**") in his assessment order dated 25th March 1998 refused the deduction on various grounds including a) the information provided by

Appellant pursuant to the said agreement comprised only of newspaper cuttings freely available and hence, cannot be treated as 'information concerning commercial knowledge and experience'; b) there were no written reports of any analysis; c) Appellant had no experience in Satellite business; and d) there was nothing to indicate that the information was utilized outside India. Appellant challenged the assessment order before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] which appeal was dismissed by an order dated 18th March 1999. Aggrieved Appellant preferred an appeal to the Income Tax Appellate Tribunal ('**ITAT**'), which also confirmed the non-allowance of deduction under Section 80-0 of the Act by its order dated 8th November 2001. It is this order, which is impugned in the present Appeal.

5. Mr. Mistry, learned Senior Counsel appearing for Appellant, states that the rejection of Appellant's claim under Section 80-0 of the Act is perverse and completely contrary to the facts of case. According to Mr. Mistri, Appellant has received fees in consideration for furnishing of information concerning commercial knowledge and for rendering technical services and the Tribunal ought to have appreciated the absence of written reports on account of confidentiality of information. Relying on the provision of Section 80-0 of the Act existing at the relevant time, Mr. Mistri submitted that the Section only required approval of the Chief Commissioner of

Income Tax ('**CCIT**') to the agreement executed and that the CCIT had granted approval to the agreement for the Assessment Year ("**AY**") 1991-92 upon specific consideration of the issue regarding furnishing of newspaper cuttings and verbal discussions of reports.

6. During the course of hearing, Mr. Mistry expanded his arguments as follows:

(i) In response to a specific request by the CCIT, prior to granting of approval, Appellant had furnished reports sent by it to Arianespace and had clarified that the conclusions/interpretations were done at quarterly personal meetings. Furthermore, most of the information was of confidential nature and hence, not reduced to written reports.

(ii) The approval of the CCIT was granted after referring to the agreements furnished to him and was for '**Assessment Years 1991-92 onwards till income under the agreement accrues fully subject to dis-allowance of 20% of the payment as attributable to services rendered in India.**'

(iii) Appellant was in possession of a communication dated 9th March 1998 from Arianespace confirming that Appellant had furnished valuable information, which was useful to them in their business and Appellant was paid

consideration for the same.

(iv) A plain reading of Section 80-0 of the Act indicates that once an assessee receives consideration from a foreign enterprise for use outside India of any information concerning commercial knowledge, experience or skill and such income received is in convertible foreign exchange, then assessee is eligible for deduction under Section 80-0 of the Act. To buttress this argument, Mr. Mistry points out that firstly, an agreement existed, secondly, fees have been paid to it by Arianespace for valuable commercial information which the company used outside India, thirdly, the fees received by Appellant were in convertible foreign exchange and lastly and most importantly, the CCIT granted approval to the agreement as satisfying the conditions of Section 80-0 of the Act and the approval was for 'the period until the income accrued fully', thus, including income received during the current and relevant AY.

(v) Since the approval was granted for all subsequent Assessment Years till the existence and continuity of the agreement, the amendment to Section 80-0 of the Act deleting the condition of approval by the CCIT and thereafter by the Central Board of Direct Taxes does not

affect in any manner the approval already given. Once, there exists approval by the CCIT *for all subsequent years* the AO is *bereft* of his powers to re-examine and reconsider the approval while passing assessment order.

(vi) Reliance has been placed on the following decisions:

(a) ***Continental Construction Limited v. Commissioner of Income Tax***[2]

(b) ***Gestetner Duplicators Pvt Ltd. v. CIT***[3]

(c) ***CIT v. Bhaichand Amoluk Consultancy (P) Ltd.***[4]

(d) ***CIT v. Container Corporation of India Limited***[5]

(e) ***Fibre Boards P. Ltd. v. CIT***[6]

(f) ***Radhasoami Satsang v. CIT***[7]

(g) ***Cummins India Ltd. v. ACIT***[8]

7. Mr. Chhotaray, learned counsel appears for the Revenue and contests the Appeal on the ground that mere sharing of newspaper cuttings does not amount to information concerning industrial, commercial or scientific knowledge, experience or skill which is a

2 (195) ITR 81
3 (117) ITR 1
4 (208) ITR 1
5 (404) ITR 397
6 (376) ITR 596
7 (193) ITR 321
8 (153) taxmann.com 223

pre-condition to seek deduction under Section 80-0 of the Act. Appellant has been unable to provide any analysis, report or assessments purportedly furnished to Arianespace and hence, Appellant is not eligible for deduction under Section 80-0 of the Act. Mr. Chhotaray draws our attention to a clarification issued by the Central Board of Direct Tax ('**Board**') by letter dated 14th September 1985 superseding its earlier letter dated 31st July 1985 which stated that letter F No.473/644-FTD dated 31st July 1985 was only a recognition of the position that approval under Section 80-0 is for the agreement as such and mention of any time limit is redundant except for the starting year. Mr. Chhotaray contends that as noticed from all the approval letters themselves, the Boards' approval to the agreements is subject to the other conditions of the Act being satisfied. These must be examined carefully by the AO while making the assessment. Mere approval does not automatically entitle the assessee to relief under Section 80-0 of the Act. The quantum, if any, of the income allowed as deduction under Section 80-0 must be necessarily determined by the AO on the facts of each case. Mr. Chhotaray submits that the approval of the CCIT is qualified and always subject to any amendment to the provision of the Act and subject to legal conditions. Mr. Chhotaray urges us to dismiss the Petition as there is no service rendered by Appellant to Arianespace as contemplated by Section 80-0 of the Act and at best, Appellant has

only performed liaison work. He draws strength from the contents of agreement dated 2nd February 1987 indicating the nature of mission as mentioned in the agreement which is amended from time to time and the last agreement has no reference to satellite or launch services and it is completely vague. Mr. Chhotaray relies upon various decisions of the Supreme Court as follows:

i) ***B.L.Passi vs CIT***[9]

ii) ***Ramnath & Co vs CIT***[10]

iii) ***CIT v. Khursheed Anwar***[11]

Mr. Chhotaray also places reliance on some portion of the decision of the Apex Court in the matter of *Continental Construction Limited (Supra)* which is discussed later.

8. We have analyzed the issues involved in the matter and arrived at the following conclusion. At the outset, we may advert to the provision of Section 80-O as it was at the relevant period i.e., at the time of execution of the initial agreement on 2nd February 1987. Section 80-O read as thus:

> *"**Deduction in respect of royalties, etc., from certain foreign enterprises.-** Where the gross total income of an assessee, being an Indian company or a person other than a company who is resident in India, includes any income by way of royalty, commission, fees or any similar payment received by the assessee from the Government of a foreign State or a foreign*

9 404 ITR 90 SC
10 425 ITR 337
11 311 ITR 468

enterprise in consideration for the use outside India of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to such Government or enterprise by the assessee, or in consideration of technical or professional services rendered or agreed to be rendered outside India to such Government or enterprise by the assessee, ***"under an agreement approved in this behalf by the Chief Commissioner or the Director General"*** *and such income is received in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India, or having been converted into convertible foreign exchange outside India, is brought into India, by or on behalf of the assessee in accordance with any law for the time being in force for regulating payments and dealings in foreign exchange, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction of an amount equal to fifty percent of the income so received in, or brought into, India, in computing the total income of the assessee.*

Provided that such income is received in India within a period of six months from the end of the previous year, or where the Chief Commissioner or Commissioner is satisfied (for reasons to be recorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as a Chief Commissioner may allow in this behalf:

Explanation for the purposes of this section: -

(i) "Convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purpose of the law for the time being in force for regulating payments and dealing in foreign exchange.

(ii) "foreign enterprise" means a person who is nonresident.

(iii) Services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India." "

9. The words "under an agreement approved in this behalf by the Chief Commissioner or Director General" were omitted by the Finance (No 2) Act, 1991 w.e.f 1st April 1992 and earlier these words were substituted for "under an agreement approved in the Board in this behalf" by the Finance Act, 1988 w.e.f 1st April 1989. Thus, at the

time of execution of the agreement between Appellant and Arianespace, the agreement required approval of the CCIT for seeking benefits of Section 80-O of the Act.

10. It is Appellant's case that in its application dated 30th September 1991 seeking approval of the CCIT, it has (i) specifically set out the mode and method of provision of information; (ii) press reports are sent through mail, but conclusions/interpretations are done at meetings which take place either in India or in France etc. Further, Appellant has set out the benefit which the foreign enterprise obtained from the services rendered by it and has also stated that the approval is desired to be operative for all subsequent AY's from 1991-1992 till the existence and continuity of the agreement. Appellant heavily relies upon inquiries made by the CCIT with it requiring response from Appellant by providing some reports which were sent to Arianespace and clarified that conclusions and interpretation of reports were done at quarterly meetings. The CCIT, vide its notice dated 17th February 1992 sought elaborate explanation as to the precise commercial assistance being rendered by Appellant and how such assistance fell within the ambit of Section 80-O of the Act. It is quite significant to note that the CCIT did harbor some misgivings and observed that it was not clear as to what further role the Appellant had to play in interpreting newspaper articles appearing in various newspapers but appears to have been satisfied with the

explanations of Appellant that analysis of articles were being provided in quarterly meetings of the parties. Thus, according to Appellant, upon being satisfied with its explanation, the CCIT was pleased to grant his approval to the agreement.

11. We have perused the application dated 30th September 1991 of Appellant seeking approval of the CCIT. Clause 4 (a) (ii) of the Application specifically refers to the question as to whether the income received in consideration for the use outside India of information concerning industrial, commercial, or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided. The specific response of Appellant to this query was that Income is received in consideration of provision of commercial knowledge. Further on the query in clause 6(a) of the application form, Appellant has specified the arrangements available with it to obtain and impart technical know-how to Arianespace by means of deputation of personnel/Managing Director for collecting/collating information from User Departments and sending press reports through mail but conclusions and interpretations being done at meetings convened either in India or in France on an average once in every three months. The manner of imparting is specified as correspondence or quarterly meetings.

12. While providing additional information as required by the CCIT, Appellant in its letter dated 11th February 1992 further clarified

that the information required by Arianespace has to be collected from a vast number of user departments and hence, it was necessary for the Arianespace to appoint a company such as Appellant to collect this information. Once again in response to a specific doubt raised by the CCIT in his letter dated 17th February 1992 regarding Appellant sending only newspaper cuttings to Arianespace, which failed to indicate 'precise commercial assistance', Appellant in its response dated 20th February 1992 reiterated that most of the discussions regarding interpretations arising from ongoing discussions with user departments are conveyed and discussed with Arianespace at their quarterly meetings. In its letter dated 16th March 1992, Appellant again reiterated that the agreement requiring approval was solely for the purpose of providing commercial information to Arianespace. It is on the basis of this explanation and clarifications that ultimately the CCIT granted approval dated 27th March 1992 to the agreement.

13. From the contents of the communications of Appellant with the CCIT, two things are amply clear, firstly, information sought by Arianespace was to be collected from a vast number of user departments and secondly that analysis and interpretation of the information was done at quarterly meetings between the parties. It was based on these two pivotal clarification statements that the CCIT granted approval to the agreement. Admittedly, the agreements were extended from time to time, *albeit* with a revised scope of work,

however, Appellant insists that the approval once accorded operated for all subsequent AY's from 1991-1992 till existence and continuity of the agreement. During the assessment proceedings of AY 1995-1996, Appellant in its response dated 12th March 1988 to a query posed by the AO stated that while newspaper articles are regularly sent, the evaluation and assessment projects are orally discussed over the phone and when they meet officials of Arianespace in India or France. It informed the AO that no reports were prepared by it and neither Appellant nor Arianespace maintained any record of any telephonic conversations nor any meetings convened as per its claim. It was in these circumstances that Appellant's claim of deductions under Section 80-O was rejected by the AO.

14. As represented by Appellant to the CCIT, for grant of approval, information was to be collected and collated from various user departments. Admittedly, information shared with Arianespace comprised only of newspaper cuttings appearing in various Indian newspapers. Undoubtedly, newspapers are not information from User Departments. Moreover, mere cut outs of newspapers do not constitute information collected from User Departments. Further, even if Appellant is to be believed regarding sharing of assessments and analysis in private quarterly meetings, Appellant was bound to furnish to the AO some record of the meetings being convened, at the least in the form of minutes or correspondence of setting up of the

meetings etc. No such document or information has been furnished to the AO. In fact, it is Appellant's specific case that the CCIT granted approval on the basis of only sharing newspaper cuttings and nothing else. We are unable to accept this contention of Appellant. It is clear that approval was accorded by the CCIT on the basis of specific statements made by Appellant that information to be shared pursuant to the agreement was that collected and collated from User Departments and analysis and assessments were to be done during quarterly meetings. Newspaper cuttings are not precluded from being shared as information but by themselves they do not constitute any commercial expertise. The AO is well within his rights to request Appellant to furnish proof of sharing the information with Arianespace for which approval was granted by the CCIT. From the replies of Appellant to the AO, it is quite clear that Appellant has not provided material to Arianespace as represented by it before the CCIT while seeking approval as newspaper cuttings are not information collected or collated from User Departments. The application form for approval specifies providing commercial assistance to Arianespace as contemplated under Section 80-O of the Act based on which approval was procured. Thus, we have no hesitation in accepting the decision of the AO in rejecting this claim of Appellant.

15. Another argument put forth by Mr. Chhotaray is that since neither approval of the Board nor that of the CCIT is required after

the 1992 amendment deleting the words "*under an agreement approved in this behalf by the Chief Commissioner of the Director General*", the AO is singularly vested with an authority to examine the agreement and call upon the Assessee to demonstrate its implementation. Mr. Mistry hastens to rebut this argument by contending that the amendment has no effect on the approval already granted by the CCIT especially in view of the fact that the approval is granted by the CCIT for the assessment years 1991-92 onward till "the income under the agreement accrues fully" and the AO is not jurisdictionally competent to revisit the approval once granted by the CCIT. This contention raises a further issue - "The effect of an approval once granted-whether it bars the AO from reviewing the same or otherwise". This question, however, need not deter us in answering the question of law arising in the matter since we are satisfied that the AO is neither revisiting the approval granted by the CCIT nor is he reviewing the same. All he is doing is examining the veracity of the claims of Appellant of having acted in aid of the agreement so executed and which has got the approval on the basis of information provided to the CCIT by Appellant in the application form as well as in the responses to his queries. Mr. Mistry thus, cannot wish away the full import of the approval in its entirety. The letter dated 27th March 1992 according approval reads as thus:

> *"1. Please refer to your application dated – received with your letter No. TH/474/ASD/1424 dated 30/9/1991. The agreement*

entered into between you and M/s. Arianespace of France on 2/2/1987 and the amendments dated 10/12/1987 and 20/2/1990 are hereby approved for the purpose of Section 80-O of the Income Tax Act, 1961, for the assessment years 1991-92 onward till the income under the agreement accrues fully, subject to a dis-allowance of 20% of the payment as attributable to services rendered in India. The reimbursement of expenses will not qualify for the deduction u/s. 80-O of the I.T. Act, 1961.

2. The income allowable as a deduction for the assessment year 1981-82 and onwards would be the net income computed after accounting for expenses incurred in earning such income.

3. The actual deduction to be allowed will, however, be such portion of the income which has been received within the prescribed time limit in convertible foreign exchange in India, or having been received in convertible foreign exchange outside India or having been converted into convertible foreign exchange outside India is brought into India within the prescribed time limit in accordance with law for the time being in force for regulating payment and dealings in foreign exchange. The Foreign Inward Remittance Certificates from the bank(s) should be filed before the Assessing Officer.

4. The grant of deduction from the total income will be subject to your fulfilling the other conditions laid down in the Act in this behalf. The amount eligible for deduction will be determined by the assessing officer at the time of assessment.

5. This approval is subject of any amendments in the provisions of the Income Tax Act, 1961; from time to time.

6. I am further to add that the approval accorded by this letter is only for the purpose of Section 80-O of the Income Tax Act, 1961, and should not be construed to convey the approval of the Central Government of the Chief Commissioner/Director General of Income Tax or any other statutory authority under the Government for any other purpose." (emphasis supplied)

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16. Paragraph 4 of the letter is of some significance. Approval is always subject to the conditions mentioned therein. The CCIT has ordained the AO to determine the amount eligible for deduction. Even *sans* this qualification, AO under the Act itself is responsible for ensuring the regularity of Income Tax Returns filed by the tax payers

in his jurisdiction and has the authority to examine the returns, ask for supporting documents, recompute the taxable income and issue assessment orders and tax demands. The AO also has the power to ask for books of accounts, documents and other evidence from the taxpayer to verify the accuracy and completeness of the return of income filed by assessee. The deductions under Section 80-O of the Act must be shown to be directly relatable to the approval granted by the CCIT. Representations made by Appellant to the CCIT at the time of seeking approval clearly indicate sharing of commercial expertise, which include newspaper cuttings, data collected and collated from User Departments, etc. The contentions of Appellant that approval granted by the CCIT is unqualified and for all AY's subsequent to 1991-92 till such time that the agreement exists, and income accrues in lieu of the same, the AO has no jurisdiction to examine the veracity of its claim for deduction under Section 80-O of the Act nor has the AO any power to reject the same are wholly unacceptable and cannot be sustained.

17. The decisions of the Apex Court and other High Courts as relied upon by Mr. Mistry relate to the interpretation of the effect of an amendment on the original provisions of law. The decision of the Supreme Court in the matter of *Continental Construction (supra)* was in fact concerned with deduction under Section 80-O of the Act. Section 80-O of the Act, as it stood at the relevant time, mandated

approval of the Board on the agreement entered into by assessee with foreign enterprise. The Board's initial approval stated it was for AY 1982-83 and included conditions similar to those in the approval granted by the CCIT in the present matter. The Apex Court on these facts held that:

> *"We shall also proceed on the footing that the assessee is also right in saying that the Board had, after considering its representations, accepted the position that the approval under Section 80-O would enure also for the assessment year 1983-84 onwards. In fact, we think that, irrespective of the Board's clarification of 1985, the correct position is that, once a contract stands approved under Section 80-O in relation to the first assessment year in relation to which the approval is sought, the approval enures for the entire duration of the contract. This is the principle enunciated in CIT vs Indian Institute of Public Opinion Co. P. Ltd. (1982) 134 ITR 23 (Delhi), the correctness of which cannot be doubted and is, indeed accepted by both counsel before us. Section 80-O does not envisage an application for approval of the contract for every assessment year or the limitation of the approval granted by the Board to any particular Assessment year., The Board approves of a contract, for having regard to the nature of the receipts flowing therefrom and once this approval is granted, the assessee is entitled to seek deduction under Section 80-O in respect of all the receipts under the contract the consideration for which is traceable to the three ingredients discussed earlier irrespective of the assessment year in which the receipts fall for assessment.*
>
> ***XXXXXXX***
>
> *The third and perhaps the most important reason is that such contracts are generally likely to be long term contracts and it is of the essence of the Applicant to know well beforehand where he stands in the matter of tax exemption and whether he can proceed to execute the contract on the basis that he would be eligible for relief he feels he is eligible for. It would result into chaos if the assessee's contracts were left to be scrutinised at the time of assessments several years after they have been implemented and the availability of an exemption provisions which the assessee was banking upon and on the basis on which he has entered into a contract denied to him for one reason or another. Whereas, duly forewarned by a disapproval, the assessee could have backed out of a contract if necessary, and saved his skin."*
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> ***XXXXXXX***

18. Based on the decision in *Continental Construction (supra)*, Appellant canvasses that once an approval is granted under Section 80-O of the Act, the Department cannot take a different view on the same set of facts especially when approval is granted till all income under the agreement fully accrues. In our view, it appears from the decision in *Continental Construction (supra),* a great deal turns on application of legal principles to the facts in the matter and not solely on the legal propositions expounded by Mr. Mistry drawing support from the various decisions relied upon by him. A close examination of the application of Appellant reveals its intent and purpose in seeking approval. It specifies collection of information from User departments and quarterly meetings to share analysis and assessments. The CCIT approval is accorded based on this representation by Appellant. Appellant simply failed to act in aid of its intent disclosed in the application form, based on which approval was granted. The AO cannot be accused of reviewing or revoking approval granted by the CCIT in the present matter. The AO simply seeks to verify as to whether Appellant has acted in terms of the approval granted by the CCIT. In our view, the AO is well within his rights so to do and has not overstepped his jurisdiction. The other decisions relied upon by Mr. Mistry also deal with similar exposition of the law. However, there exists a clear distinction between the AO reviewing the approval

granted by the CCIT and AO seeking to verify whether Appellant has acted in aid of the agreement so approved. It is needless to enter into a discussion as to whether approval once granted by the CCIT/Board is amenable to review by AO. The present case clearly demonstrates a deviation in implementation of the agreement, in total violation of the representations made by Appellant to the CCIT based on which the approval was procured.

19. In the decision of the Apex Court relied upon by Mr. Chhotaray in the matter of *B.L.Passi (supra)* the assessee therein claimed deduction under Section 80-O of the Act on the basis that it had received consideration in convertible foreign exchange in the name of M/s Pasco International wherein the assessee was the sole proprietor. This consideration was received for providing specialized industrial and commercial knowledge relating to the Indian automobile industry including detailed information about the industry, analyzing government policies relating to the Indian automobile industry and also to identify opportunities for supply of products of M/s Sumitomo Corporation, i.e., the foreign enterprise to various customers in India etc. Hence the assessee claimed it was entitled to claim deduction under the said provision. The Assessing Officer had denied the claim. The major information sent by the assessee to the foreign enterprise was in the form of blueprints for manufacture of dyes for stamping of doors and the assessee had failed to furnish the copy of the blueprint

which it claimed to have sent to the foreign enterprise. While upholding the order of the Assessing Officer, the Supreme Court held as under:

> *"16) The blue prints made available by the Appellant to the Corporation can be considered as technical assistance provided by the Appellant to the Corporation in the circumstances if the description of the blue prints is available on record. The said blue prints were not even produced before the lower authorities. In such scenario, when the claim of the Appellant is solely relying upon the technical assistance rendered to the Corporation in the form of blue prints, its unavailability creates a doubt and burden of proof is on the Appellant to prove that on the basis of those blue prints, the Corporation was able to start up their business in India and he was paid the amount as service charge.*
>
> ***xxxxxx***
>
> *18) ……..The Appellant failed to prove that he rendered technical services to the Sumitomo Corporation and also the relevant documents to prove the basis for alleged payment by the Corporation to him. The letters exchanged between the parties cannot be claimed for getting deduction under Section 80-O of the IT Act.*
>
> *19) Before parting with the appeal, it is pertinent to mention here that it is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the Statute to effectuate the legislative animation."*

20. A similar view has been taken by the Supreme Court in the matter of *Ramnath & Co (supra)* and *Khursheed Anwar (supra)*. The Supreme Court, in the aforesaid decisions, discussed the object of providing incentive to entrepreneurs vide provisions in the Act. Provisions like Section 80-O of the Act were originally in the former Section 85-C of the Income Tax Act, 1961 which was substituted by Finance (No. 2) Act, 1971. Section 80-O was inserted in place of Section 85C which was deleted by the Finance (No. 2) Act, 1967.

While moving the bill relevant to the Finance Act No. 2 of 1967, the then Finance Minister highlighted the fact that fiscal encouragement needs to be given to Indian industries to encourage them to provide technical know-how and technical services to newly developing countries. It is also seen that the object was to encourage Indian companies to develop technical know-how and to make it available to foreign companies so as to augment the foreign exchange earnings of this country and establish a reputation of Indian technical know-how for foreign countries. The objective was to secure that the deduction under the section shall be allowed with reference to the income which is received in convertible foreign exchange in India or having been received in convertible foreign exchange outside India, is brought to India by and on behalf of taxpayers in accordance with the Foreign Exchange Regulations. What the section envisages is a genuine sharing of information relating to industrial, commercial, or scientific knowledge, experience, or skill.

21. It is also significant to note that in *Continental Construction (supra)* the Apex Court took note of various circulars of the CBDT and delineated the functions of the AO with reference to the claim for deductions under Section 80-O of the Act even when approval had been granted by the Board in the following passage :-

> *"We should, however, make it clear that our conclusion does not mean the deprivation of all functions of the Assessing Officer while making the assessment on the applicant. The Officer has to satisfy himself (i) that the amounts in respect of which the relief is claimed are amounts arrived at in accordance with the*

> *formula, principle or basis explained in the assessee's application and approved by the Board; (ii) that the deduction claimed in the relevant assessment year relates to the items, and is referable to the basis on which the application for exemption was asked for and granted by the Board; (iii) that the receipts (before the 1975 amendment) were duly certified by an accountant or that, thereafter, the amounts have been received in or brought into India in convertible foreign exchange for exemption granted in principle has to be translated into concrete figures for the purposes of each assessment. Neither the introduction of the words " in accordance with and subject to the provisions of these sections" nor the various "conditions" outlines in the letter of approval add anything to or detract anything from the scope of the approval."*

22. In *Ramnath & Co (supra)* the Apex Court commented on *Continental Construction (supra)* as under: -

> *" A few aspects at once emerge from the said decision in Continental Construction that even under the provisions of Section 80-O of the Act as then existing, whereunder prior approval of CBDT was required to claim deduction, this Court underscored that deduction would be available only in relation to the consideration attributable to the information and services envisaged by Section 80-O and deduction would be granted to the extent of such consideration; and all these aspects were to be examined by the Assessing officer while making the assessment."*

23. Mr. Mistry made a valiant effort to distinguish the facts of the present case from that in the cases of *B.L.Passi (supra)*, *Ramnath & Co.(supra)* and *Khursheed Anwar (supra)*. On *B.L.Passi (supra*), Mr. Mistry contends that Appellant in that matter was a managing agent and there was a principal-agent relationship between the parties and the deduction under 80-O of the Act was dependent upon the agent's consideration calculated based on invoice amount received by his principal. On *Ramnath & Co (Supra)*, Mr. Mistry says that the remuneration of the assessee was dependent upon satisfaction of the principal about the quality of goods supplied. He thus distinguishes

the facts in the present case from the others by contending that the agreement entered into by Appellant in the present matter with Arianespace provides for a fixed consideration. Mr. Mistry has pointed out certain other differences in the facts of the present matter and those relied upon by the Revenue. We have gone through the decisions cited by Mr. Chhotaray in the matter of *B.L.Passi (supra)*, *Ramnath & Co (supra)* and *Khursheed Anwar (supra)*. We are satisfied that despite different sets of facts in each of the cases, the ratio in all the decisions of the Apex Court establishes that the AO is well within his jurisdiction to verify whether the information shared is attributable to the information or service contemplated by the provision. The AO is in fact required to make such an enquiry and for that purpose the assessee is required to place on record requisite material supporting its claim for deduction and on the basis of which approval was procured from the CCIT.

24. The present case displays an obvious attempt on the part of Appellant in creating an illusion of acting in aid of the agreement, on the basis of the approval granted by the CCIT, while at the same time refusing to produce any evidence in respect of which relief is being sought. Merely brandishing newspaper cuttings does not amount to proof of sharing commercial expertise with its French counterpart as mandated by Section 80-O of the Act.

25. Considering the above discussion and at the end of the legal

tether, we endorse the decision of the ITAT and answer the second question of law in the negative. The Appeal fails and is accordingly dismissed. The circumstances warrant the parties be directed to bear their own costs. We direct accordingly.

(DR. NEELA GOKHALE, J.) (K. R. SHRIRAM, J.)