

Mere installation of turbine won't lead to setting-up of new industrial unit for sec. 80-IA relief

Summary – The High Court of Gujarat in a recent case of Atul Ltd., (the Assessee) held that Mere installation of turbine for power generation would not lead to setting up of a new industrial unit; assessee would not be entitled for deduction on same under section 80-IA

Facts

- The assessee claimed to have established a new power plant and claimed deduction under section 80-IA.
- The Assessing Officer was of the opinion that generation of power would require boiler and turbine both since boiler would manufacture steam which would be a raw material for production of power with the aid of turbine and such only a plant would be a new industrial undertaking capable of generating electricity. The assessee pointed out that in the existing power plant, the assessee had excess steam production capacity which was to be utilised by the turbine installed in the new plant. It was also contended that even otherwise, the assessee could have purchased steam from market and utilized for production of generation of electricity through the turbine installed in the new industry.
- The Assessing Officer did not agree with the contentions of the assessee that the turbine should be treated as an independent power generating unit and thereby disallowed the assessee's claim of deduction under section 80-IA.
- On appeal, the Commissioner (Appeals) held that no industrial undertaking came into existence. He, therefore, rejected the assessee's appeal.
- On further appeal, the Tribunal rejected the appeal of the assessee.
- The assessee thereafter, filed an application for rectification before the Tribunal. The Tribunal allowed the application for rectification.
- On appeal to the High Court:

Held

- In case of *Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd.* [\[2008\] 305 ITR 227/173 Taxman 322](#) also, the Supreme Court observed that a patent manifest and self evident error which does not require elaborate discussion of evidence or arguments to establish it can be said to be an error apparent on the face of the record.
- As noted, the assessee had installed a turbine for power generation, which relied on the excess steam production capacity of the plant. The assessee claimed that it had thus, set up a new power plant which qualify for deduction under section 80-IA. The Tribunal by its original judgment, upheld the view of the revenue authorities holding that turbine itself would not be sufficient to generate power and the plant therefore would not qualify as a new industry.

- In *Gujarat Alkalies & Chemicals Ltd. v. CIT* [\[2013\] 350 ITR 94/\[2012\] 208 Taxman 31/20 taxmann.com 764 \(Guj.\)](#), the High Court observed that the true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is a new identifiable endeavour where substantial investment of fresh capital is made to enable earning of profit attributable to that new capital.
- In the present case, the view adopted by the revenue authorities which was upheld by the Tribunal was that by mere installation of turbines, the assessee did not install a new industry, since turbines themselves would not be sufficient for power generation, without generation of steam.
- It can be stated that the Tribunal had committed an error apparent on record which needed rectification. At best, the High Court propounded that mere dependence of a new industry on an existing industry, would not disqualify itself from claiming deduction.