

Punjab Produce and Trading Co. Ltd. Vs. The CIT, West Bengal, Calcutta (1971) 2 SCC 540,

Court had occasion to consider Section 23-A Explanation b(iii) of Income Tax Act, 1922 which provision has been extracted in paragraph 5 of the judgment which is to the following effect:-

“Explanation. — For the purposes of this section a company shall be deemed to be a company in which the public are substantially interested—

(a) If it is a company owned by the Government or in which not less than forty per cent of the shares are held by the Government.

(b) If it is not a private company as defined in the Indian Companies Act, 1913 (7 of 1913) and—

(i) its shares (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the previous year beneficially held by the public (not including a company to which the provisions of this section apply):

Provided that in the case of any such company as is referred to in sub-section (4), this sub-clause shall apply as if for the words ‘not less than fifty per cent’ the words ‘not less than forty per cent’, had been substituted;

(ii) the said shares were at any time during the previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(iii) the affairs of the company or the shares carrying more than fifty per cent of the total voting power were at no time during the previous year controlled or held by less than six persons (persons who are related to one another as husband, wife, lineal ascendant or descendant or brother or sister, as the case may be, being treated as a single person and persons who are nominees of another person together with that other person being likewise treated as a single person:

Provided that in the case of any such company as is referred to in sub-section (4), this clause shall apply as if for the words ‘more than fifty per cent’, the words ‘more than sixty per cent’, had been substituted.”

18. This Court held following in paragraph 8:-

“8.The clear import of the opening part of clause (b) with the word “and” appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the

conditions contained in the other subclauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50 per cent of the total voting power were during the same period not held by less than six persons.....”