

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F, मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "F", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं  
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and  
Shri Ashwani Taneja, Accountant Member**

**ITA No.5513/Mum/2011  
Assessment Year: 2002-03**

**&**

**ITA No.5532/Mum/2011  
Assessment Year: 2003-04**

**&**

**ITA No.5514/Mum/2011  
Assessment Year: 2004-05**

ACIT, Circle -1(1) Aayakar Bhavan, 5 <sup>th</sup> Floor, M.K. Road, Mumbai-20	<b>बनाम/ Vs.</b>	Frigorifico Allana Limited, Allana House, Allana Road, Colaba, Mumbai-400001
(Revenue)		(Respondent)
P.A. No.AAACF0861F		

**ITA No.4078/Mum/2011  
Assessment Year: 2002-03**

**&**

**ITA No.4167/Mum/2011  
Assessment Year: 2003-04**

**&**

**ITA No.4137/Mum/2011  
Assessment Year: 2004-05**

Frigerifico Allana Limited, Allana House, Allana Road, Colaba, Mumbai-400001	<u>बनाम/</u> Vs.	ACIT, Circle -1(1) Aayakar Bhavan, 5 <sup>th</sup> Floor, M.K. Road, Mumbai-20
(Appellant)		(Revenue)
P.A. No. AAACF0861F		

**ITA No.5528/Mum/2011**  
**Assessment Year: 2000-01**  
**&**  
**ITA No.5529/Mum/2011**  
**Assessment Year: 2001-02**  
**&**  
**ITA No.5530/Mum/2011**  
**Assessment Year: 2002-03**  
**&**  
**ITA No.5531/Mum/2011**  
**Assessment Year:2003-04**  
**&**  
**ITA No.5516/Mum/2011**  
**Assessment Year: 2004-05**

ACIT, Circle -1(1), R.No.579, Aayakar Bhavan, Mumbai-20	<u>बनाम/</u> Vs.	Frigerio Conserva Allana Ltd., Allana House, 4 JA Allana Road, Colaba, Mumbai-400001
(Revenue)		(Respondent)
P.A. No.AACCF0522B		

**ITA No.4195/Mum/2011**  
**Assessment Year: 2000-01**  
**&**  
**ITA No.4214/Mum/2011**  
**Assessment Year: 2001-02**  
**&**  
**ITA No.4225/Mum/2011**  
**Assessment Year: 2002-03**  
**&**  
**ITA No.4286/Mum/2011**  
**Assessment Year:2003-04**  
**&**

**ITA No.4057/Mum/2011**  
**Assessment Year: 2004-05**

Frigerio Conserva Allana Ltd., Allana House, 4 JA Allana Road, Colaba, Mumbai-400001	<b><u>बनाम/</u></b> Vs.	ITO-1(1)(3), Aayakar Bhavan, 5 <sup>th</sup> Floor, M.K. Rd. Mumbai-20
(Appellant)		(Revenue)

Revenue by	Shri G.M. Doss & Shri E. Shreedhar (DR)
Respondent by	Shri P.J. Pardiwalla & Vasanti Patel (AR)

सुनवाई की तारीख/ <b>Date of Hearing:</b>	<b>04/07/2016</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>27/07/2016</b>

**आदेश / O R D E R**

**Per Bench:**

These appeals belong to different assessees of same group arising in different assessment years involving identical issues and therefore these were heard together and being disposed by this common order.

**2.** During the course of hearing, arguments were made by Shri P.J. Pardiwalla & Ms. Vasanti Patel, Authorised Representatives (ARs) on behalf of the Assessee and by Shri G.M. Doss & Shri E. Shreedhar, Departmental Representatives (DRs) on behalf of the Revenue.

**First we shall take up appeals of the Assessee & Revenue in the case of Frigerio Conserva Allana Ltd in ITA**

**No.4195/Mum/2011 & ITA No. 5528/Mum/2011, respectively, for A.Y. 2000-01:**

**3. Ground Nos 1 & 2** of assessee's appeal and **Ground No.2** of Revenue's appeal involve identical issue with regard to denial of deduction u/s 80HHC to the assessee on the ground that deduction u/s 80HHC was denied to the main exporter also, to whom the assessee (a supporting manufacturer) had sold its goods.

**3.1.** We have heard both the parties on this issue in detail and also gone through the orders of the lower authorities as well as copies of judgment placed before us. The brief background of this case is that assessee is supporting manufacturer, selling its goods to the export house namely M/s. Allana Sons Ltd, who had issued disclaimer certificate in favour of the assessee u/s 80HHC and accordingly, the assessee claimed benefit of deduction u/s 80HHC on the amount of turnover made by the assessee to the export company. During the course of reassessment proceedings, the AO noted that the said export house has been denied the benefit of deduction u/s 80HHC on the ground that the said export house company namely M/s. Allana Sons Ltd. (here in after referred to as 'ASL' in short) had incurred loss in case the amount of incentive is not included in its export profits. Accordingly, the AO of the assessee withdrew the benefit of claim of deduction u/s 80HHC in the case of present assessee also solely on the ground when the main exporter i.e. ASL as itself being denied the benefit of deduction u/s 80HHC, therefore, consequently, the assessee should also be denied the benefit of deduction

u/s 80HHC. Accordingly, the claim made by the assessee u/s 80HHC for Rs.16,87,12,722/- on the turnover of Rs.97,59,61,941/-(disclaimed by ASL in favour of the assessee) was withdrawn by the AO.

**3.2.** Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) and made exhaustive submissions on various grounds to agitate this addition. Ld. CIT(A) accepted the submissions of the assessee in part and allowed the benefit of deduction u/s 80HHC to the assessee on the ground that the assessee is entitled for benefit of deduction u/s 80HHC without depending upon actual allowability of deduction u/s 80HHC in the hands of export house and he further held that in any case the export house has been actually allowed the deduction u/s 80HHC, and therefore, on facts also the assessee is entitled for deduction u/s 80HHC.

**3.3.** Being aggrieved, the revenue filed an appeal before the Tribunal on the ground that Ld. CIT(A) ought not to have allowed the benefit of deduction u/s 80HHC in the light of judgment of Hon'ble Supreme Court in the CIT v. IPCA Laboratories Ltd. 266 ITR 521 (SC) wherein it was held that in case there was loss from export activities, then the export house cannot pass on the benefit of deduction u/s 80HHC by way of issue of disclaimer certificate u/s 80HHC (4)(a) to the supporting manufacturer.

**3.4.** Before us, the Ld. Counsel of the assessee defended and justified the order of Ld. CIT(A) for allowing deduction u/s 80HHC on many grounds. His first argument was that deduction has been actually allowed to the export house i.e.

ASL by the Tribunal and order of the Tribunal has been upheld by the Hon'ble Bombay High Court wherein the reopening done by the AO of the ASL has been quashed and on merits also Hon'ble High Court had found that deduction u/s 80HHC was allowable in the hands of ASL as per law and facts. Thus, the whole premise on which the deduction was disallowed in the hands of the assessee ceases to exist and therefore the deduction has to be allowed to the assessee. Second argument made by the assessee was that this controversy has been resolved in the judgment of Hon'ble Bangalore Bench in the case of Shamanur Kallappa & Sons vs. ACIT 23 DTR (Bang)(Trib) 269 which has been subsequently upheld by the Hon'ble Karnataka High Court by vide its order dated 12<sup>th</sup> January 2015 in ITA No. 10/2009 by holding that deduction u/s 80HHC to the supporting manufacturer is allowable independent of actual allowing of deduction in the hands of main exporter. The third argument made by the Ld. Counsel was that reopening was done in the case of the assessee by the AO on the issue of disallowance u/s 40A(3) only and no issue was raised in the 'Reasons' recorded with respect to deduction u/s 80HHC. The disallowance made u/s 40A(3) has been deleted by the Ld. CIT(A) against which revenue has not filed any appeal. Thus, main issue on which 'Reasons' were recorded has been settled and therefore, no other disallowance would be sustainable as reopening would become bad in law.

**3.4.** Per contra, Ld. DR relied upon the judgment of Hon'ble Supreme Court in the case of IPCA Laboratories Ltd. v. CIT

(supra) and relied upon the order of the AO. We have considered the entire matrix and facts of this case and copies of judgment placed before us. Before going deeper in details, it has been noted by us at the outset that deduction u/s 80HHC in the hands of ASL (i.e. export house) has been found to be allowable by Hon'ble Bombay High Court in the case of M/s. Allana Sons Ltd. v. DCIT writ petition No.802 of 2005 dated 22<sup>nd</sup> July 2014 wherein it was held that reopening of the assessment in the hands of M/s. Allana Sons Ltd. was not valid as per law and the same was quashed with following observations:

*“We have considered the rival submission. It is well settled that a notice to reopen the assessment under section 148 of the Act can only be issued if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. This reason to believe on the part of the Assessing Officer has not to be on the basis of change of opinion i.e. where Assessing Officer has had occasion to consider an issue during the assessment proceeding under section 143(3) of the Act. In this case, the Assessing Officer had during the proceeding under section 143(3) of the Act raised queries to the petitioner specifically with regard to petitioner’s claim for deduction under section 80HHC of the Act and the petitioner’s response to the same was considered by the Assessing Officer while passing the assessment order. Therefore, the impugned notice and the grounds in support thereof are in fact a change of pinion on the part of the Assessing Officer. Therefore, on the*

*aforesaid ground alone impugned notice is not sustainable.”*

**3.5.** It is further noted by us that, on merits also Hon’ble High Court observed that deduction u/s 80HHC was actually allowable to the said export house the observations of the Hon’ble High Court are very useful and these are reproduced hereunder for the sake of ready reference:

*“In any view of the matter, the stand of the petitioner on merits with regard to interest income being included while computing the claim for deduction under section 80HHC of the Act has been upheld not only by the CIT(A) but also by the Tribunal in its order dated 22 November 2006. Besides the amendment to section 80HHC(3) of the Act by addition of fifth proviso thereto with retrospective effect will work to the benefit of the petitioner. In the above view of the matter, allowing reassessment proceedings would be a mere academic exercise only because the Assessing Officer would be bound by the orders of the Tribunal. Moreover, the very basis of the impugned notice dated 10 January 2005 will not be sustainable. In view of all the above reasons, we set aside the impugned notice date 10<sup>th</sup> January 2005.”*

**3.6.** Thus, it is noted by us that the Hon’ble High Court has not only quashed the reassessment order but also held that deduction u/s 80HHC is actually allowable to ASL. It is further noted by us that it has been held by Hon’ble Gujarat

High Court in the case of Avani Exports & Others dated 02.07.2012 that the amendment made by Taxation Laws (Amendment) Act 2005 in section 80HHC to curtail the benefit of u/s 80HHC on the amount of incentive received by the main exporters would not operate retrospective. Thus, if we consider on facts the case of ASL on merits also, it is noted that after including amount of incentives there would arise positive amount of profit. Thus, viewed from any angle, and keeping in view the fact that when deduction u/s 80HHC has been actually allowed in the hands of ASL i.e. export house, therefore, the whole premises of the AO based upon which the deduction was denied to the assessee, ceases to exist. Under these facts and circumstances, we find that Ld. CIT(A) has rightly allowed the benefit of deduction u/s 80HHC to the assessee and therefore, we find nothing wrong in the order of Ld. CIT(A) and therefore, the same is upheld. Since, we have allowed the relief to the assessee on the first argument itself therefore, we treat other arguments as academic in nature and therefore, we are not dealing with the same at this stage. As a result, grounds raised by the revenue in this appeal are dismissed and grounds raised by the assessee may be treated as allowed.

**4. Ground No.3.1:** In this ground the assessee has challenged the action of lower authorities wherein it was held that if the assessee is allowed u/s 80HHC then it cannot be allowed deduction u/s 80IB. During the course of hearing before us it has been fairly submitted by the Ld. Counsel that aggregate

amount of deduction allowable to the assessee u/s 80HHC as well as u/s 80IB should not exceed the amount of profits earned. The reliance has been placed in this regard on the judgment of Hon'ble Bombay High Court in the case Associated Capsules Pvt Ltd vs. DCIT 322 ITR 42.

**4.1.** Per contra Ld. DR relied upon the order of the lower authorities. We have gone through the orders passed by the lower authorities as well as judgment of Hon'ble Bombay High Court in the case of Associated Capsules Pvt Ltd (supra). In view of judgment of Hon'ble Bombay High Court, we send this issue back to the file of the AO who shall examine the facts and allow the deduction to the assessee u/s 80HHC as well as u/s 80IB so long as the aggregate amount of deduction does not exceed the amount of profits. Thus, the total amount of deduction allowable to the assessee under both of these sections should be restricted to the amount of profits. Thus, this ground may be treated as partly allowed for statistical purposes.

**4.2.** As a result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigerio Conserva Allana Ltd in ITA No.4214/Mum/2011 & ITA No. 5529/Mum/2011 for A.Y. 2001-02**

**5.** It is noted that Ground Nos. 1 & 2 of assessee's appeal and Ground No.1 of Revenue's appeal are identical to A.Y. 2000-01

and and since no distinction in facts or legal position has been brought out by either party before us, therefore, AO is directed to follow our order for A.Y. 2000-01. Thus, Grounds 1 & 2 of assessee's appeal are treated as allowed and sole ground raised by the revenue is dismissed.

**6. Ground No.3.1.** This ground is also identical to ground no. 3.1. of assessee's appeal in A.Y. 2000-01, and accordingly AO is directed to follow our order A.Y. 2000-01. This Ground may be treated as partly allowed for statistical purposes.

**7.** As a result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigerio Conserva Allana Ltd in ITA No.4225/Mum/2011 & ITA No. 5530/Mum/2011 for A.Y. 2002-03**

**8.** It is noted that grounds raised in those appeals are identical to grounds raised in A.Y. 2000-01. No distinction has been brought out by other party before us. Thus, ground nos. 1 & 2 of assessee's appeal are allowed and ground no.3 of assessee's appeal is sent back to the file of the AO with the direction as given above and solitary ground raised by the revenue is dismissed. The AO is directed to follow our order for A.Y. 2000-01.

**9.** As a result, assessee's appeal is partly allowed and revenue's appeal is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigerio Conserva Allana Ltd in ITA No.4186/Mum/2011 & ITA No. 5531/Mum/2011 for A.Y. 2003-04**

**10.** It is noted that grounds raised in these appeals are identical to grounds raised in A.Y. 2000-01. No distinction has been brought out in facts or legal position by either party before us and therefore ground no.1 as well as additional ground of assessee's appeal are allowed and solitary ground raised by the revenue is dismissed.

**11.** As a result, assessee's appeal is allowed and revenue's appeal is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigerio Conserva Allana Ltd in ITA No.4057/Mum/2011 & ITA No. 5516/Mum/2011 for A.Y. 2004-05**

**12.** It is noted that in this year also grounds raised by the assessee in assessee's appeal and ground no.1 of revenue's appeal are identical to AY 2000-01. The AO is directed to follow our order for A.Y. 2000-01. Consequently, ground no.1 of assessee's appeal is allowed and ground no.1 of Revenue's appeal is dismissed.

**12.1.** Ground No.2 the revenue has challenged the action of Ld. CIT(A) in restoring the issue of disallowance of Rs.5,000/- u/s 14A as per Rule 8D to the AO. It is noted that Ld. CIT(A) has sent this issue back to the file of the AO. We do not find

anything wrong in the order of Ld. CIT(A) and therefore, no interference is called for in the order of Ld. CIT(A) and the same is upheld.

**13.** As a result, assessee's appeal is allowed and revenue's appeal is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigorifico Allana Limited in ITA No.4078/Mum/2011 & ITA No.5513/Mum/2011 for A.Y. 2002-03:**

**14.** It is noted that in this case the issues raised are absolutely identical. The export house is same i.e. M/s. Allanasons Ltd. No distinction has been brought out by the either party on the facts or position of law and therefore, in view of detailed discussion made by us in the order for A.Y. 2000-01 in the hands of M/s Frigorio Conserva Allana Ltd, we allow the ground raised in assessee's appeal in terms of our direction as given in the said order and dismiss the grounds raised by the revenue. The AO is directed to follow our order for A.Y. 2000-01 in the hands of above said assessee.

**15.** As a result, appeal filed by the assessee is partly allowed for identical purposes and appeal filed by the revenue is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigorifico Allana Limited in ITA No.4167/Mum/2011 & ITA No.5532/Mum/2011 for A.Y. 2003-04**

**16.** In this case issues involved are identical as in A.Y.2002-03. No distinction has been made out in facts or in legal position and therefore, assessee's appeal is allowed and appeal filed by the revenue is dismissed.

**Now we shall take up appeals of the Assessee & Revenue in the case of Frigorifico Allana Limited in ITA No.4537/Mum/2011 & ITA No.5514/Mum/2011 for A.Y. 2004-05:**

**17.** It is noted that Ground No.1 of assessee's appeal and ground no.1 of revenue's appeal involve identical issue of deduction u/s 80HHC. No distinction in facts or legal point has been pointed out before us and either party and therefore, AO is directed to follow our order in A.Y. 2002-03. Grounds raised by the assessee are allowed and ground No.1 of revenue's appeal is dismissed.

**18.** In Ground No.2 the revenue has agitated the action of Ld. CIT(A) for restoring the issue of disallowance of Rs. 50,000/- u/s 14A to the AO. It is noted that Ld. CIT(A) has rightly sent back this issue to the file of the AO for its re-adjudication. Nothing wrong has been pointed by us and therefore respectfully following our earlier order, we uphold the order of Ld. CIT(A) and dismiss this ground.

**18.1.** As a result, assessee's appeal is allowed and revenue's appeal is dismissed.

**19.** As a result, appeals of the assessee are partly allowed and appeals of the Revenue are dismissed.

Order pronounced in the open court on 27<sup>th</sup> July, 2016.

Sd/-  
(Amit Shukla )

Sd/-  
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/07/2016

*Patel, P.S.* नि.स.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai