

आयकर अपीलअ अधकरण, राजकोट ँयायपीठ, राजकोट ।  
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE SHRI RAJPAL YADAV,  
HON'BLE JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED  
HON'BLE ACCOUNTANT MEMBER**

**ITA No.51/RJT/2007**

**अधकरण वर्षा Asstt. Year: 2003-04**

Harendra Mohanlal Karia Prop: M/s.Link Enterprise Plot NO.27, ward-12B Gandhidham.	Vs.	ITO, Ward-1 Gandhidham.
---	-----	----------------------------

<b>(Applicant)</b>		<b>(Responent)</b>
--------------------	--	--------------------

Assessee by :	Shri Vimal Desai, AR
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई का ताराख/**Date of Hearing** : 19/09/2019  
घोषणा का ताराख /**Date of Pronouncement**: 19/09/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-II, Rajkot dated 04.12.2006 passed for the Asstt.Year 2003-04.

2. It is pertinent to note that the Id.AO has disallowed commission of Rs.1,04,24,701/-. On appeal the Id.CIT(A) has restricted such disallowance to Rs.20,84,940/-. There was another issue vide which deduction under section 80HHC was restricted to Rs.6,84,581/-. The Revenue has challenged deletion of disallowance of commission, whereas the assessee has challenged confirmation of disallowance of commission at Rs.20,84,940/- and restriction of deduction under section 80HHC at Rs.6,84,581/-. Both the appeals i.e.

206/RJT/2007 at the instance of the Revenue, and the appeal of the assessee i.e. ITA No.51/RJT/2007 were dismissed by the Tribunal vide order dated 13.2.2009. Dissatisfied with the order of the Tribunal, Revenue went in appeal before the Honøble High Court vide Tax Appeal No.2269 of 2009. Honøble High Court has set aside order of the Tribunal and restored the appeal of the Revenue for re-adjudication. That appeal stands dismissed on account of low tax effect involved by virtue of recent CBDT Circular No.17 of 2019 dated 8.8.2019. Since the assessee accepted order of the Tribunal and did not go to the Honøble High Court, therefore order of the Tribunal *qua* the issue involved in the assessee's appeal attained finality. It could not be construed that part of the order has also been remitted back to the Tribunal. The proceedings will travel to the Tribunal to the extent that were subject matter before the Honøble High Court. Once the assessee chooses not to file any appeal against order of the Tribunal, it become final, hence, the appeal of the assessee has not been restored; it becomes *infructuous* and dismissed.

3. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the Court on 19<sup>th</sup> September, 2019 at Rajkot.**

Sd/-  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**

Rajkot; Dated 19/09/2019