

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos. 3500 & 3501/Ahd/2014
(Assessment Years : 2002-03 & 2003-04)

Shri Rameshchandra S. Patel, 501, Shikar, Near Navrangpura Rly. Crossing, Navrangpura, Ahmedabad-380 009.	Vs.	DCIT (OSD)-I, Circle – 4, (Now re-designated as Circle – 2(1)(1)) Ahmedabad.
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[PAN No. AEHPP 6335 A]

(Appellant)

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(Respondent)

Appellant by :	Shri Tushar Hemani, A.R.
Respondent by :	Shri S. K. Dev, Sr. D.R.

Date of Hearing	18.07.2019
Date of Pronouncement	18.10.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

Both the appeals filed by the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-VIII, Ahmedabad dated 30.10.2014 under Section 254 of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) arising out of the order dated 23.05.2013 passed by the DCIT (OSD)-I, Circle-4, Ahmedabad for the Assessment Years 2002-03 & 2003-04.

Since both the appeals relate to the same assessee, the same are heard analogously and are being disposed of by a common order.

2. The brief facts leading to this case is this that the assessee, an individual Proprietor of M/s. Manish Chemicals, engaged in the business of manufacturing and export of dyes, chemicals, etc. filed return its of income on 25/10/2002 declaring total income of Rs.86,17,902/- after claiming deduction under Chapter VIA i.e. u/s. 80HHC Rs. 2,30,84,239/-, U/s. 80IA Rs.94,61,615/- and u/s. 80L for Rs.9,000/-. The AO finalized the assessment for A.Y. 2002-03 vide order u/s. 143(3) dated 30/3/2005 determining total income at Rs.1,36,94,580/-. The said assessment was a subject matter of appeal before the CIT(A) and the ITAT. As per the order dated 31/12/2007 giving effect to the order of the ITAT, total income of the assessee for the assessment year under appeal was determined at Rs. 2,05,62,228/-. In the said order, the AO had adopted the figure of deduction u/s.80HHC at Rs.1,53,99,563/- which was recomputed on the basis of the reasoning given in the order u/s. 143 (3) r.w.s. 147 dated 31/12/2007.

But the said reopening of assessment u/s 143(3) r.w.s. 147 was ultimately quashed by the Hon'ble ITAT under its order dated 24.01.2013 in ITA No.432 & 648/Ahd/2009, thus the order u/s 143(3) r.w.s. 147 dated 31.12.2007 whereby and whereunder the assessee was denied the benefit of the provision of section 80HHC of the Act stands cancelled as the case made out by the Learned Advocate appearing for the assessee before us. Subsequently, the Assessing Officer by and under an order dated 23.05.2013 u/s 254 while giving effect to the order of the Learned ITAT determined the total income of Rs.2,05,62,228/- in terms of the order dated 31.12.2007. It is relevant to mention that in the said order the Learned AO has worked out the amount of deduction u/s 80HHC at Rs.1,53,99,563/-. In fact, on the same date of 31.12.2007, the Learned AO has passed another order u/s 143(3) r.w.s. 147 of the Act for the A.Y. 2002-03 wherein the assessee has been denied the benefit

of deduction u/s 80HHC in respect of DEPB. By both the orders passed by the Learned AO dated 31.12.2007 and 23.05.2013 such benefit of deduction u/s 80HHC in respect of income by way of sale of DEPB Licence has been negated but since such reopening was quashed by the ITAT on 24.01.2013, the re-computation of deduction u/s 80HHC on the line of reasoning given in such reassessment order u/s 143(3) r.w.r. 147 dated 31.12.2007 is absolutely non-application of mind as it appears from the records before us. It also appears from the records that the Hon'ble ITAT in its order dated 24.01.2013 followed the judgment passed by the Hon'ble Jurisdictional High Court in the case of Avani Exports reported in 348 ITR 391 in terms of which the authorities below ought to have allowed the deduction u/s 80HHC on the export incentive of DEPB. Neither the AO, nor the Learned CIT(A) has not took into consideration this particular aspect of the matter and hence we are of the considered view to remit the issue to the file of the Learned AO to render the benefit to the assessee upon making computation afresh in the light of the observations made hereinabove by us respectfully relying upon the judgment passed by the Jurisdictional High Court. The addition, therefore, is hereby deleted. In the result, assessee's appeal, is allowed for statistical purposes.

3. In the result, both the assessee's appeals are allowed for statistical purposes.

This Order pronounced in Open Court on

18/10/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 18/10/2019
PritiYadav, Sr.PS

ITA Nos. 3500 & 3501/Ahd/2014
Shri Rameshchandra S. Patel
Asst.Years –2002-03 & 2003-04

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad