आयकर अपीलीय अधिकरण, ''डी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA Nos.: 3650 & 3651/MUM/2008**

निर्धारण वर्ष/Assessment Years: 2003-04 & 2004-05

Sanmar Speciality Chemicals Ltd., (Successors to Intec Polymers Ltd.,) 9, Cathedral Road, Chennai – 600 086.	vs.	**The ACIT,** Range 3(2), Mumbai.
PAN: AAACI 2638D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri V. Nandakumar, JCIT

सुनवाई की तारीख/Date of Hearing : 07.02.2023
घोषणा की तारीख/Date of Pronouncement : 10.02.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These two appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-III, Mumbai in Appeal Nos.CIT(A)III/ACIT.3(2)/IT.21/06-07 & CIT(A)III/DCIT.3(2)/ IT.198/06-07 dated 12.02.2018 & 13.02.2018. The assessments were framed by the ACIT / DCIT, Range 3(2), Mumbai for the

assessment years 2003-04 & 2004-05 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 27.02.2006 & 20.10.2006 respectively.

2. The first common issue in these two appeals of assessee is as regards to the order of CIT(A) reducing the amount eligible for deduction u/s.80IB of the Act from 'profits & gains of business' while computing deduction u/s.80HHC of the Act. The facts and circumstances in both the appeals of assessee are exactly identical and grounds raised are also identical and hence, we will take the facts from assessment year 2003-04. The grounds raised reads as under:-

> (a) The learned Commissioner of Income Tax (Appeals) erred in reducing the amount eligible for deduction under Section 801B from the "Profits and Gains of business" while computing deduction under Section 80HHC. The Appellant relies on the decision of Madras HC in the case of SCM Creations Vs ACIT, Circle I - Tirupur.
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> (b) The learned Commissioner of Income tax (A) - III has erred in disallowing the write off of advance paid for purchase of goods.
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> (c) The learned Commissioner of Income -tax (A) – III has erred in not considering the grounds of the appellant with reference to computation of total turnover for computing deduction under section 80 HHC.

3. Briefly stated facts are that the assessee company claimed deduction u/s.80IB of the Act. The AO while completing assessment required the assessee to file revised statement of computation for

claim of deduction u/s.80IB of the Act, the AO allowed the claim of deduction at Rs.1,34,38,583/-. The AO noted that the assessee has also claimed deduction u/s.80HHC of the Act for an amount of Rs.62,01,535/-. The AO noted that in view of the provisions of section 80IB(13) r.w.s. 80IB(9) of the Act, an amount of profit and gains allowed deduction u/s.80IB of the Act cannot be considered for any other deduction under the heading 'C' chapter VI-A and accordingly he disallowed the claim of deduction u/s.80HHC of the Act and recomputed the claim of deduction at Rs.21,90,048/- as against claimed by assessee at Rs.62,01,535/-. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) following the decision of Special Bench of ITAT in the case of Rogini Garments, 294 ITR (AT) 15 (Chennai) (SB) noted that the issue is squarely covered by the Special Bench of ITAT, Chennai and hence, he confirmed the action of AO. Aggrieved, now assessee is in appeal before the Tribunal.

5. Before us, the ld.counsel for the assessee filed computation of deduction claimed u/s.80IB as well as computation of deduction u/s.80HHC of the Act. The ld.counsel for the assessee before us stated that the assessee has rightly claimed the deduction

u/s.80HHC amounting to Rs.62,01,535/- for the reason that assessee's net profit as per business is Rs.2,48,98,022/- and further claimed deduction u/s.80IB of the Act amounting to Rs.1,34,38,583/- and other disallowances had remained at Rs.1,20,13,797/-. The ld.counsel stated that as per the computation of AO, the profit remains to be allowed is Rs.98,23,750/- whereas assessee's claim u/s.80HHC of the Act is restricted to the extent of Rs.62,01,535/-. For this preposition, the ld.counsel for the assessee relied on the decision of Hon'ble High Court of Madras in the case of SCM Creations vs. ACIT, (2008) 304 ITR 319 and he stated that more than the SCM Creations, the Hon'ble Bombay High Court in the case of Associated Capsules (P) Ltd., vs. DCIT, (2011) 332 ITR 0042 has considered this issue in elaborate and held that even after the introduction of section 80IA(9) of the Act, deduction u/s.80HHC of the Act has to be computed in the manner specified u/s.80HHC of the Act on the profit of the business computed under the head 'profits and gains of business' as reduced by the amount specified in clause baa of section 80HHC / 80HHC(3B) as the case may be. It was held by Hon'ble Bombay High Court that there is no scope for reducing profits of business by the amount of profit allowed u/s.80IA(1) of the Act. Finally, it was held that the effect of introduction of section

80IA(9) of the Act is merely allowability of deduction computed u/s.80HHC of the Act so that combined deduction u/s.80IA(1) and 80HHC of the Act does not exceed the profits and gains of the undertaking. The ld.counsel drew our attention to para 26 of the judgment of Hon'ble Bombay High Court, wherein by illustration this issue was explained as under:-

> 26. To illustrate, if the profits and gains of the eligible undertaking is Rs. 100, the deduction allowable under section 80-IA(1) is 30 per cent and the deduction allowable under section 80HHC is 80 per cent, then accord- ing to the Revenue, deduction to be allowed under section 80-IA would be Rs. 30 (30 per cent of Rs. 100) and in view of section 80-IA(9), the deduction under section 80HHC has to be computed not on the profits of the business of Rs. 100 but on Rs. 70 being the profits of the business reduced by the amount of profits allowed under section 80-IA(1). According to the assessee, deduction under section 80HHC has to be computed on the profits of the business of Rs. 100 and not on Rs. 70 as contended by the Revenue, because, according to the assessee, section 80-IA(9) does not affect the computation of deduction under section 80HHC but affects the allowance of deduction computed under section 80HHC, so that the aggregate deduction does not exceed the profits of the business.

Finally, the Hon'ble Bombay High Curt considered this issue in paras 32 to 35 as under:-

> 32. If the words used in section 80-IA(9) were 'shall not qualify', then, probably it could be said that the legislature intended to affect the quantum of deductions computable under other provisions under heading 'C' of Chapter VI-A, because the amount that qualifies for deduction alone forms the basis for computing the deduction. The word 'qualify' is an expression relatable to the computation of deduction. The word 'allowed' is relatable to allowing the deduction that is computed. The word 'allowed' cannot be equated with the word 'qualify'. Since section 80-IA(9) uses the words 'shall not be allowed', in our opinion, the section seeks to restrict the

allowance of deduction and not the computation of deduction under any other sections under heading 'C' of Chapter VI-A of the Act.

33. Wherever the Legislature intended that the deduction allowed under one section should affect the computation of deduction under other provisions of the Act, the legislature has expressly used words to that effect. It may be noted that sections 80HHD(7) and 80-IA(9A) [presently 80-IA(9)] were introduced by Finance Act, 1998 with effect from 1-4-1999. Section 80HHD(7) provides that the deduction allowed under section 80HHD(1) shall not qualify to that extent for deduction under any other provisions of Chapter VI-A under the heading 'C', whereas, section 80-IA(9A) provides that the deduction allowed under section 80-IA(1) shall not be allowed under any other provisions of Chapter VI-A under heading 'C'. Similarly, in section 80-IC(5), the words used are that notwithstanding anything contained in any other provision of the Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or section 10A or section 10B in relation to the profits and gains of the undertaking. Thus, the legislature has used specific words whenever it intended to affect the computation of deduction. As the words used in section 80-IA(9) relate to allowance and not computation of deduction, it cannot be inferred that section 80-IA(9) is inserted with a view to affect computation of deduction under any other provisions under heading 'C' of Chapter VI-A.

34. It is well established in law that the language of the statute must be read as it is, and the statute must not be read by adding or substituting the words unless it is absolutely necessary to do so. Since section 80-IA(9) uses the words 'shall not be allowed', it is not permissible to read section 80-IA(9) by substituting the above words with the words 'shall not qualify' or by adding the words 'shall not be allowed in computing' the deduction under any other provisions under heading 'C' of Chapter VI-A of the Act. When the plain and simple meaning of section 80-IA(9) can be ascertained from the words used in the section, it would not be proper to construe the section by substituting or adding words as suggested by the revenue.

35. In these circumstances, in our opinion, the reasonable construction of section 80-IA(9) would be that where deduction is allowed under section 80-IA(1), then the deduction computed under other provisions under heading 'C' of Chapter VI-A has to be restricted to the profits of the business that remains after excluding the profits allowed as deductions

> under section 80-IA, so that the total deduction allowed under the heading 'C' of Chapter VI-A does not exceed the profits of the business.

6. On the other hand, the ld.senior DR relied on the decision of Hon'ble Supreme Court in the case of HCL Technologies Ltd., Civil Appeal Nos.8489-8490 of 2013 and he stated that this issue is covered in favour of Revenue.

7. On the other hand, the ld.counsel for the assessee drew our attention to para 14 of the decision of Hon'ble Supreme Court in the case of HCL Technologies, *supra,* and stated that the issue under consideration was deduction u/s.10A of the Act and not the claim of exemption u/s.80IB of the Act. He stated that there is a clear cut distinction between the claim of deduction made under the provisions of section 10 and the claim of exemption under chapter C (VIA) of the Act.

8. After hearing rival contentions and going through the judgment of Hon'ble Bombay High Court in the case of Associated Capsules Pvt. Ltd., *supra,* it is clear that the deduction claimed u/s.80IA as well as the provisions of section HHC of the Act does not exceed the profits and gains of the undertaking i.e., profit declared under the head 'profits and gains of business or profession'. In the

present case before us, the assessee claim u/s.80IB of the Act was Rs.1,34,38,583/- and the claim of deduction u/s.80HHC of the Act was Rs.62,01,535/- as against total profit and gains declared from business or profession at Rs.2,48,98,022/-. According to us, the issue is squarely covered by the decision of Hon'ble Madras High Court in the case of SCM Creations, *supra* and Hon'ble Bombay High Court in the case of Associated Capsules (P) Ltd., *supra.* Respectfully following the same, we allow this issue of assessee's appeals and direct the AO to recompute the deduction accordingly.

9. One more issue in this appeal in ITA No.3651/Mum/2008 for assessment year 2004-05 is as regards to the claim of deduction of DEPB u/s.80IB of the Act.

10. At the outset, the ld.counsel for the assessee filed copy of judgment of Hon'ble Supreme Court in the case of CIT vs. M/s.Avani Exports in SLP No.9273/2013, wherein the Hon'ble Supreme Court has confirmed the judgment of Hon'ble MP High Court, wherein the amendment brought in section 80HHC(3) of the Act by introduction of 3rd & 4th proviso was quashed and the distinction between exporters having a turnover above Rs.10 crore or below Rs.10 crore were directed to be treated similarly. The ld.counsel for the

assessee drew our attention to para 27 of the judgment, which reads as under:-

> "27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessees whose export turnover is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessees." Against the High Court judgment these SLPs are filed by the Union of India. Mr. Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to severe the aforesaid two conditions as onerous and utra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the Section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs. 10 crores and other like the respondents with turn over of more than Rs.10 crores would be at par and both would be entitled to the benefits.
>
> We find that in essence the High Court has quashed the severable part of third and fourth proviso to Sec.80HHC (3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:
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> "Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 cr. should be treated similarly. This order is in substitution of the judgment in Appeal.
>
> With the aforesaid clarification all these SLPs including that of assessees filed against the judgment of M.P.High Court are disposed of."

In view of the above, the ld.counsel stated that the AO be directed to recomputed the deduction in term of the above decision of Hon'ble Supreme Court removing the distinction between the

exporters having turnover below Rs.10 crore or above Rs.10 crore. To this preposition, the ld.Senior DR could not controvert.

11. After hearing rival contentions on this issue, we direct the AO to allow the claim of deduction as the amendment brought in by the legislature in the provisions of section 80HHC(3) of the Act by introducing 3rd & 4th proviso is quashed and recompute the deduction accordingly. Hence, this appeal is remitted back to the file of the AO for recomputation of deduction. Therefore, both the appeals of the assessee are allowed in term of the above.

12. In the result, both the appeals filed by the assessee are allowed in term of the above.

Order pronounced in the open court on 10th February, 2023 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 10th February, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त /CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF.