आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपील सं /ITA No. 56/RJT/2020

निर्धारण वर्ष/Assessment Year : 2004-05

M/s. Jayshri Exports (India) Dhoraji Road, Navagadh, Jetpur, Gujarat - 360370	बनाम/ Vs	The Deputy Commissioner of Income-tax Circle-1, Rajkot
स्थायीलेखासं./जीआइआर सं./PAN/GIR No.: **AABFJ8267B**		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से**/**Assessee by : Shri Chetan Agarwal, Ld. AR

राजस्वकी ओर से / Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/**Date of Hearing : 17/09/2025**

घोषणा की तारीख/**Date of Pronouncement : 25/11/2025**

आदेश**/ORDER**

Per, Dr. Arjun Lal Saini, A.M:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2004-05, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by Commissioner of Income-tax (Appeals) ('CIT(A)'), dated 30.07.2019, which in turn arises out of an assessment order passed by the Assessing Officer u/s. 143(3) of the Act on 27.12.2006.

2. The grounds of appeal raised by the assessee are as follows:

"(1) The Ld.CIT(A) erred in law and on facts in limiting u/s.80HHC to the extent of Rs.2,17,759/- against the claim of deduction of Rs.25,90,947/-.

(2) On the facts and circumstances of the case it is contended that the claim ought to be allowed as per the return of income.

(3) The grounds on the basis of which the deduction u/s.80HHC has been scaled down are factually incorrect and not in accordance with law and the Ld.CIT (A) erred in law and on facts in accepting the deduction u/s.80HHC as allowed by the Assessing Officer in assessment order instead of Rs.25,90,947/-, as claimed by the assessee.

(4) Your assessee craves leave to add, alter, amend or withdraw any of the grounds stated here above."

3. The facts of the case which can be stated quite shortly are as follows: The return of income was filed by the assessee, under consideration, on 01.11.2004, declaring NIL income claiming deductions u/s. 80HHC of the I.T. Act at Rs. 25,90,947/- and u/s. 80IB at Rs. 1,81,465/-. The return of income so filed by the assessee, was accompanied with Audit Report in Form No. 3CB, 3CD, 10CCB & 10CCAC. The return of income was processed u/s 143(1) of the I.T. Act on 27.01.2005, without any modification. The notice u/s. 143(2) of the I.T. Act dated 07.02.2005, was issued and served upon the assessee by RPAD. The notices u/s 143(2) and 142(1) of the Act, along with a questionnaire, all dated 05.05.2006 were also issued and served upon the assessee on 12.05.2006. In response to said notices, Authorised Representative of the assessee attended from time to time and furnished the details called for. The assessing officer noted that the assessee has claimed deduction u/s. 80HHC at Rs. 25,90,947/-. The claim for deduction u/s 80HHC of the I.T. Act has been verified, by the assessing officer, vis-à-vis with the amended provisions of Section 80HHC, as amended by the Taxation Laws (Amendment) Act, 2005 with retrospective effect. On verification of working of Trading & Profit & Loss Account, it was noticed by assessing officer that the assessee has made 100% Export sales of Rs. 5,25,19,979/-, during the year under consideration and has earned net profit of

Rs. 25,90,947/-. The claim of the deduction u/s 80HHC has been verified in view of the amended provisions of Section 28 and Section 80HHC of the I.T. Act. It was noticed by the assessing officer that the assessee's case is covered under the 2nd proviso to Sub-section (3) of Section 80HHC of the I.T. Act which is applicable to the assessees having export turnover not exceeding rupees Ten Crores during the previous year. The assessing officer noticed that assessee has worked out the deduction u/s. 80HHC in the Audit Report in Form No. 10CCAC, which requires to be revised in view of the amended provisions with effect from 01.04.1998 as amended by Taxation Laws (Amendment) Act, 2005. The allowable deduction u/s. 80HHC is as under, as per revised working:

	Rs.
Profits & Gains of Business or profession as computed under the head Profits & Gains of Business/Profession as per Form No. 10CCAC	*7,25,861*
Less: 90% of Export incentives & Other Receipts (90% of Rs. 95,96,101/-	*86,36,490*
Loss of the business	*(-) 79,10,629*

4. As seen from the above, the assessing officer noticed that the assessee has incurred loss of Rs. 79,10,629/-, if the 90% of the Export Incentives are excluded from the book results. Since there is a loss from the business, no deduction u/s 80HHC is allowable as there is no income or profits derived from the business. Since, the total profit of the business is a loss, the 5th proviso to sub-section (3) of Section 80HHC is attracted as amended by Taxation Laws (Amendment) Act, 2005 with retrospective effect from 01.04.1992 in this case, the same is reproduced hereunder:

> *Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of --*

(a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or

(b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Therefore, the deduction u/s. 80HHC of the I.T. Act was worked out as under after setting off the loss against the 90% of the Export Incentives allowable to the assessee:

90% of Export Incentives income as per Form No. 10CCAC (90% of Rs. 95,96,101/-)	
86,36,490 x 5,25,19,979 / 5,25,19,979	*86,36,490/-*
Total Profit of the business as per Form No. 10CCAC	
(-) 79,10,629 x 5,25,19,979 / 5,25,19,979	*(-)79,10,629/-*
	7,25,862/-
Deduction u/s. 80HHC allowable @30% of Rs. 7,25,862/-	*2,17,759/-*

From the above facts, the assessing officer concluded that the assessee is entitled to deduction u/s. 80HHC of the I.T. Act at Rs. 2,17,759/-, only.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the Assessing Officer. The ld.CIT(A) observed that as per the assessee, the turnover of the assessee is Rs.5,25,19,979/-(export sales) and therefore the entire profits qualifies for the deduction u/s 80HHC @ 30% that is, the rates of deduction applicable for AY 2004-05. The assessee has relied upon the decision of Hon'ble Supreme Court as given in the case of Topman Exports (Civil application No.1699 of 2012 arising out of SLP (C) No.26558 of 2010) wherein it is held by the Hon'ble Apex Court that it is only the surplus on the transfer of DEPB (i.e. transfer price less face value of DEPB) on which the assessee is not entitled to the deduction u/s.80HHC as per the amended

law. The assessee, before learned CIT (A), in his written submissions, has further stated that the assessee has filed a writ petition before the Hon'ble High Court of Gujarat for the amendment made in section 80HHC by the Taxation Law (Amendment) Act., 2005. However, learned CIT(A) did not accept the above plea of the assessee, and stated that many assessees had challenged the constitutional validity of insertion of condition in the 3rd and the 4th proviso to section 80HHC (3) of the Act by amendment of Taxation Law (Second Amendment) Act, 2005 and accordingly Hon'ble High Court of Gujarat has given its decision in the case of Avani Exports and Others vs. CIT, Rajkot in special application No.7926 of 2006. But this decisions of Hon'ble High Court of Gujarat has given in the cases of those assessees in whose cases the export turnover exceeds Rs.10 crores. Thus, this decision of Hon'ble High Court of Gujarat is not applicable to the case of the assessee as the export turnover of the assessee is below Rs.10 crores. Again, the decision of Hon'ble Supreme Court is also not applicable to the case of the assessee, as the AO in the assessment order u/s.143(3) of the Act has considered the export incentives and other receipts for the purpose of calculating the deduction u/s.80HHC of the Act. In this regard the second part of calculation of profit u/s.80HHC of the Act as made by the AO on page No. 4 of this assessment order u/s.143(3) of the Act may be referred to while calculating the eligible deduction of Rs.2,17,759/- u/s.80HHC of the Act, the AO as per his working as given on page No.4 of the assessment order has considered 90% of the exports, Incentives income as per form No.10CCAC in view of the amended provisions of section 80HHC as amended by Taxation Law (Amendment) Act., 2005. Considering these facts, it was held by ld.CIT(A) that the AO as per his working of deduction u/s.80HHC of the Act, as given on page Nos.3 & 4 of the assessment order, has correctly calculated the eligible deduction of Rs.2,17,759/-

being 30% of the profit of Rs.7,25,862/- and therefore such action of the AO was confirmed by ld. CIT(A).

6. Aggrieved by the order of the Ld. CIT(A), assessee is in further appeal before this Tribunal.

7. The Learned Counsel for the assessee submitted that the amendment in Section 80HHC of the Act came in 2005, however, the said amendment which came in 2005 is not retrospectively applicable. Moreover, the turnover is less than Rs.10 Crore. Therefore, Ld. Counsel for the assessee submitted that the deduction claimed in the return of income may be allowed, for that, Ld. Counsel for the assessee relied on the latest judgment of the Hon'ble Supreme Court in the case of CIT vs. M/s. Avani Exports & Anr. in Petition(s) for Special Leave to Appeal (C) No(s). 9273/2013.Therefore, Ld. Counsel for the assessee, based on the above decision of the Hon'ble Supreme Court, claimed that assessee's having turnover below Rs. 10 Crore and above Rs. 10 crores, both are eligible to claim deduction, under section 80HHC of the Act, therefore, amount mentioned in the return of income, for deduction under section 80HHC of the Act, should be allowed to the assessee.

8. On the other hand, Ld. DR for the Revenue relied on the findings of the Assessing Officer.

9. I have heard both the parties and perused the materials available on record. I find merit in the submissions of learned Councsel for the assessee and noted that the issue under consideration is squarely covered in favour of assessee, by the judgement of

the Hon`ble Supreme Court in the case of CIT vs. M/s. Avani Exports & Anr. in Petition(s) for Special Leave to Appeal (C) No(s). 9273/2013, wherein the Hon'ble Supreme Court held as follows:

"Amendment to Section 80HHC(3) of the Income Tax Act, 1961 (in short `the Act') was made by the Taxation Laws (Second Amendment) Act, 2005 with retrospective effect i.e. with effect from 1st April, 1992. By this amendment certain benefits were in fact extended to the exporters who are entitled to claim according to Sec.80HHC of the Act. However at the same time, the amendment also carved out two categories of exporters, namely, those whose export is less than Rs. 10 crores per year and those exporters whose exports turn over is more than Rs.10 crores per annum. Insofar as entitlement of these benefits to the exporter having turn over of more than Rs.10 crores p.a. is concerned, two conditions contained in third and fourth proviso to the said amendment were to be satisfied for claiming the benefits. Those were:

(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being Duty Remission Scheme.

All the respondents in these SLPs, who are the exporters, belong to the second category. They filed the writ petitions challenging conditions mentioned in third and fourth proviso to Section 80 HHC(3). In fact it was their precise contention that these conditions are severable and therefore these two conditions should be declared ultra vires and severed. The rationale behind seeking such a prayer was obvious inasmuch as the writ petitioners did not want entire Notification to be declared ultra vires which was to their advantage. What they wanted was that the benefit of amended provision be accorded, without insisting on the aforesaid conditions.

The High Court vide impugned judgment has decided the issue in favour of the writ petitioners by concluding as under:

"26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessees whose assessments were still pending although such benefit will be available to the assessees whose assessments have already been concluded. In other words, in this type of substantive

amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a fewer section of the assessees.

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:

"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."

10. Therefore, by way of the above judgement, the Hon`ble Supreme Court has clearly held that the cases of exporters, having a turnover below and those above 10 Crores, should be treated similarly and eligible for duction under section 80HHC of the Act. As the issue is squarely covered in favour of the assessee by the judgement of Hon`ble Supreme Court (supra) and the Revenue is unable to produce any material to controvert the aforesaid findings of the Hon`ble Supreme Court (supra).Therefore,

respectfully following the binding judgment of the Hon`ble Supreme Court (supra), I allow the appeal of the assessee.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 25/11/2025.

Sd/-
(Dr. Arjun Lal Saini)
लेखा सदस्य/Accountant Member

//True Copy//

राजकोट /Rajkot

दिनांक/ Date: 25/11/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot