REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA 267 OF 2008, ITA 1316 OF 2008
ITA 4 OF 2009, ITA 907 OF 2009
ITA 906 OF 2008, ITA 1002 OF 2008

% Judgment reserved on:13.07.2010
Date of Decision:29.11.2010.

(1) **ITA 267 OF 2008**

M/s Great Eastern Exports ....APPELLANT
Through: Mr. Kanan Kapoor, Advocate

Versus

The Commissioner of Income Tax ....RESPONDENT
Through: Ms. Prem Lata Bansal, Advocate

(2) ITA 1316 OF 2008

M/s Arctic India Engg. (P) Ltd. ....APPELLANT
Through: Ms. Shashi M. Kapila, Advocate

Versus

Dy. Commissioner of Income Tax ....RESPONDENT
Through: Ms. Prem Lata Bansal, Advocate

(3) ITA 4 OF 2009

The Commissioner of Income Tax ....APPELLANT
Through: Ms. Prem Lata Bansal, Advocate

Versus

M/s S.M. Flanges Pvt. Ltd ....RESPONDENT
Through: Mr. K. Sampath, Advocate

(4) ITA 907 OF 2009

The Commissioner of Income Tax ....APPELLANT
Through: Ms. Prem Lata Bansal, Advocate

Versus

M/s S.M. Flanges Pvt. Ltd ....RESPONDENT
Through: Ms. Shashi M. Kapila, Mr.Siddharth Kapila and Mr. R. R.Maurya, Advocates.

(5) ITA 906 OF 2008

Eastern Medikit Ltd. ….APPELLANT
Through: Mr. Anoop Sharma, Advocate with Mr. Manu K. Giri, Advocate

Versus

Dy. Commissioner of Income Tax ….RESPONDENT
Through: Ms. Prem Lata Bansal, Advocate

(6) ITA 1002 OF 2008

Neetee Clothing Private Ltd. ….APPELLANT
Through: Dr. Rakesh Gupta, Advocate with Mr. Ashwani Taneja, Ms. Poonam Ahuja and Ms. Aarti Saini, Advocates

Versus

The Commissioner of Income Tax …RESPONDENT
Through: Ms. Prem Lata Bansal, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. In all these appeals, we are concerned with the manner in which profits and gains of the business are to be ascertained before computing the relief under Section 80HHC of the Income Tax Act (hereinafter would be referred to as 'the Act'). There are certain deductions which are allowed under Section 80IA of the Act as well. Therefore, to put it precisely question for consideration is: once a particular Undertaking or Enterprise becomes entitled to claim and is

allowed deduction of certain amount of the profits and gains under Section 80IA of the Act, whether deduction to the extent of such profits claimed under Section 80IA would not be allowed for computing deduction under Section 80 HHC or whether the profits and gains are to be computed and deduction undertaken independently all over again, irrespective of the deduction already claimed and allowed under Section 80 IA of the Act. This question revolves around the interpretation which is to be given to sub-Section (9) of Section 80IA of the Act and that provision reads as under:

> "(9) Where any amount of profits and gains of an {undertaking} or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C-Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of {undertaking} or enterprise, as the case may be".

2. It is manifest that a the plain reading of the aforesaid provision suggests that the amount of profits and gains claimed by the assessee and allowed to it under that provision is not to be allowed again and to the extent of such profits and gains, the profits and gains are to be reduced to that extent while claiming deduction under other provisions under the heading "C-deductions in respect of certain incomes" and that would include Section 80HHC. According to the counsels for the assessees, however, the answer is not that simple and they exhort us to examine the question in the context of the aim of Chapter VIA which contains these provisions and also the case law which has emerged on the interpretation thereof.

Therefore, before reverting back to the question again, we would like to traverse through relevant provisions of the said Chapter as well as case law relied upon.

Scheme of Chapter VI A before its amendment:

3. Chapter VIA of the Act deals with certain deductions. It is in three parts. Part A described as 'General' details the scheme of deductions. Part B enumerates specific deductions which are allowed in respect of certain payments and Part-C contains the provisions for allowing certain deductions in respect of profits and gains from business. A reading of the provisions falling in Part-A would demonstrate that deductions under this Chapter are to be made from "the gross total income". Various kinds of deductions are provided in Part B and C. However, the general provision contained in Section 80A mandates that the aggregate amount of deductions under this Chapter would not exceed "the gross total income" of the assessee. Section 80 A reads as under:-

> **"**Section 80A - Deductions to be made in computing total income-(1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U.
>
> (2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.
>
> (3) Where, in computing the total income of an association of persons or a body of individuals, any deduction is admissible under section 80G or [section 80GGA or section 80GGC] or section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80-IA [or section 80-IB] [or section 80-IC] [or section 80-ID or section 80-IE] or section 80J or section 80JJ, no deduction under the same section shall be made in computing the total income of a

member of the association of persons or body of individuals in relation to the share of such member in the income of the association of persons or body of individuals.

(4) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 1 0B or section 10BA or in any provisions of this Chapter under the heading “C-Deductions in respect of certain incomes”, where, in the case of an assessee, any amount of profits and gains of an undertaking or unit or enterprise or eligible business is claimed and allowed as a deduction under any of those provisions for any assessment year, deduction in respect of, and to the extent of, such profits and gains shall not be allowed under any other provisions of this Act for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.

(5) Where the assessee fails to make a claim in his return of income for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading “C.--Deductions in respect of certain incomes”, no deduction shall be allowed to him thereunder.]

(6) Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading “C-Deductions in respect of certain incomes”, where any goods or services held for the purposes of the undertaking or unit or enterprise or eligible business are transferred to any other business carried on by the assessee or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the undertaking or unit or enterprise or eligible business and, the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, then, for the purposes of any deduction under this Chapter, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

Explanation.--For the purposes of this sub-section, the expression “market value”,--

(i) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or

enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;

(ii) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.]

[(7) Where a deduction under any provision of this Chapter under the heading "C.--Deductions in respect of certain incomes" is claimed and allowed in respect of profits of any of the specified business referred to in clause (c) of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year."

4. The "gross total income" is defined in Section 80B (5) to mean the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter.

5. A conjoint reading of Section 80A (2) and 80B (5) would bring out the fact that various deductions provided in this Chapter are to be computed on the "gross total income'. It also follows that where such gross total income is found to be a net loss in the year concerned, no deduction under this Chapter is to be allowed.

6. The contours and scope of the scheme contained in Chapter-VIA has come up for discussion before various High Courts. Interplay of Section 80HHC and 80-I involving same kind of issue first came up for consideration before Madhya Pradesh High Court and was discussed elaborately in its decision contained in ***J.P. Tabacco Private Limited*** *Vs.* ***Commissioner of Income Tax,*** *229 ITR 123 (M.P.)*. The question which was framed for the opinion of the Court, in that case was of following nature :-

> **"**Whether the Tribunal is right in law in holding that the deduction under section 80-I is to be allowed on balance of income after deducting the relief under section 80HH from gross total income and not from gross total income as defined in Section 80B (5) of the Act ?"

7. The Court answered the question in the negative and in favour of the assessee holding that the two provisions are independent and deductions under Section 80-I is not be allowed on the balance of income after deducting the relief under Section 80 HH from the gross total income. The Court traced the history of various legislative amendments made in the aforesaid provisions following in Chapter VIA of the Act and following discussion ensued thereupon:-

> "Sub-section (9) of Section 80HH, as it stood prior to insertion of Section 80I by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, originally included only Section 80J. Section 80J providing for deduction in respect of. the profits and gains from newly established industrial undertakings or ships or hotel business in certain cases did not make any provision for reduction of the gross total income by the amount of deduction admissible to the assessee under Section 80HH. It was only by an amendment of the said Section 80J that the provision for reducing the gross total income by the amount of deduction under Section 80HH of the Act by the Direct Taxes (Amendment) Act, 1974, with effect from April 1, 1974, was inserted. Section 80I was inserted in its present form by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, and by the same Finance (No. 2) Act, Section 80HH(9) was amended and the words "Section 80I or" were inserted to make the said provision

applicable to Section 80I as well. However, no provision was made in Section 80I to provide for deduction of the gross total income by deduction allowed under Section 80HH for the purpose of allowing deduction under Section 80I. It would, thus, be seen that when Section 80J already existed in Sub-section (9) of Section 80HH, an amendment was made in Section 80J in the year 1974 but no such provision was made in so far as Section 80I was concerned. This clearly centra-indicates that Sub-section (9) of Section 80HH by itself meant that deduction allowed under Section 80HH is to be reduced from the gross total income for granting the benefit of Section 80J and, for that matter, of Section 80I. It was provided in Section 80J itself by later amendment while no such provision was made in Section 80I even though inserted on a later date. The provision of law is, therefore, clear that in so far as the benefit of Section 80I is concerned, it has to be granted on the gross total income and not on the income reduced by the amount allowed under Section 80HH.

In the result, we find that the Tribunal was not right in holding that deduction under Section 80I is to be allowed only on the balance of the income after deducting the relief under Section 80HH from the gross total income and accordingly we answer the said question in favour of the assessee and against the Revenue".

8. Special Leave petition against this decision was dismissed by the Supreme Court. (See 245 ITR (ST) 71). The Judgment of Madhya Pradesh High Court was thereafter repeatedly followed by the same Court as well as other High Courts. All these judgments were taken

note of by the Supreme Court in ***JCIT*** *Vs.* ***Mandideep Engineering and Packaging India Private Ltd***. *292 ITR 1 (SC)* which passed the following short and crisp order in that case:-

> **"**1.The point involved in the present case is whether sections 80HH and 80-I of the Income-tax Act, 1961, are independent of each other and therefore a new industrial unit can claim deductions under both the sections or the gross total income independently or that deduction under Section 80HH can be taken on the reduced balance after taking into account the benefit taken under section 80HH.
>
> 2. The Madhya Pradesh High Court in J.P. Tobacco Products P. Ltd. Vs. CIT reported in (19980 229 ITR 123 took the view that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80-I on the gross total income. Against this judgment, special leave petition was filed in this court which was dismissed on the ground of delay on July 21, 2000 (see {2000} 245 ITR (St.) 71). The decision in J.P. Tobacco Products P. Ltd. {1998) 229 ITR 123 (MP) was followed by the same High Court in the case of CIT Vs. Alpine Solves P. Ltd. In IT.A. No. 92 of 1999 decided on May 2, 2000. Special leave petition against the decision was dismissed by this court on January 12,2001, (see {2001} 247 ITR (St.) 36). This view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgments. See CIT v. Chokshi Contacts P. Ltd. {2001} 251 ITR 587 (Raj); CIT v. Amod Stamping {2005} 274 ITR 176 (Guj}; CIT v. Mittal Appliances P. Ltd. {2004} 270 IUTR 65 (MP); CIT v. Rochiram and Sons {2004} 271 ITR 444 (Raj); CIT v. Prakash Chandra Basant Kumar {2005} 276 ITR 664 (MP); CIT v. S.B. Oil Industries P. Ltd. (2005) 274 ITR 495 (P & H); CIT v. SKG Engineering P. Ltd. {2005} 119 DLT 673 and CIT v. Lucky Laboratories Ltd. {2006} 200 CTR 305 (All).
>
> Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions against the judgments of different High Courts following the view taken in those judgments cannot be permitted to take a

> contrary view in the present case involving the same point. According, the civil appeal is dismissed. No costs.**”**

9. It is thus clear that the consistent view taken by various High Courts was affirmed by the Supreme Court. It is not necessary to discuss all these judgments. However, we would like to reproduce certain observations from the judgment of Rajasthan High Court in ***CIT*** *Vs.* ***Chokshi Contacts P. Ltd.,*** *251, ITR 587 (Raj.)* as it discusses the issue in greater details and in fact discusses the scheme of the Act in short and highlights Chapter VIA in particular. The scheme of the Act which is taken note of by the Court and described is that Chapter 1 deals with preliminary definitions by defining various expressions used in the Act subject to the context of the issue. Chapter II deals with the basis of charge for levying income tax and additional income tax and deals with charging of the tax of income and the scope of total income determined for the purpose of computation of income and certain other matters. Chapter III deals with the incomes which do not form part of the total income at all. Chapter IV deals with computation of total income from different sources. For this purpose it divides the sources of income in six sub-heads on the basis of which income from each source is to be computed. Part D of Chapter IV deals with the computation of income from profits and gains of business or profession with which we are concerned. Chapter E deals with computation of capital gains and Part F deals with the income from other sources. Remaining Part A and Part C dealing with income from salaries and from house property respectively. Part B of Chapter IV which dealt with the income from interest on securities has since been deleted. Part D of

Chapter IV deals with computation of profits and gains of business or profession providing which of the incomes fall within the definition of profits and gains of business or profession, what deductions or adjustments are to be allowed, and what deductions are not permissible and the extent of permissible adjustments and allowance of deduction of various nature with which we are not presently concerned. Chapter V deals with income of other persons to be included in assessee's total income. Chapter VI deals with aggregation of the income from different sources and to set off or carry forward of loss computed under different sources of income of the assessee.

10. The Court then proceeded to discuss the scheme of Chapter VIA in the following manner:-

> "Chapter VI-A which consists of Sec. 80-A to Sec. 80-W deals with specified concession in computing tax as well as specified deduction to be made in computing total income. These concessions or deductions are extended in connection with certain investment expenses and areas of business and trade activity with object of incentive to savings, and promotion to experts as well as economic development with emphasis on providing new industries in backward areas. We in the present case are concerned with specific deductions to be made in computing total income of the assessee under that Chapter. It is further significant to notice that Chapter VIA becomes operative on reaching the last stage of computation of income from different sources until Chapter VI. While ultimately net taxable income

> for any assessment year is determined only after reaching net result after applying all provisions, as are applicable in respect of different matter. Yet each Chapter deals with independent subject matter al different stages. As noticed briefly above, the Chapter IV sets the stage for computing income from different sources. On computing income from each different sources, and income of other persons in certain cases to be added in total income, stage is reached for making adjustments of losses of the current year from any sources as well as losses carried forward from previous year to be adjusted against income of current year."

11. Reading various provisions of this Chapter together, the Court was of the view that specific provisions were made that the gross total income computed before reaching the stage of invoking the provisions of Chapter VIA, was not to be further adjusted in quantifying any claim to further deduction under that Chapter. The Court noted that the "gross total income" was assigned a special meaning under this Chapter by defining the same in Section 80B (5) of the Act. The Court then took note of the provisions contained in Section 80 AB of the Act which read as under:-

> "Section 80AB:- Where any deduction is required to be made or allowed under any Section (except section 80M) included in this Chapter under the heading "C.--Deductions in respect of certain incomes" in respect of any income of the nature specified in that Section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the

> deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income."

12. Interpreting Section 80 B (5) and Section 80 AB of the Act together, the Court opined that once the gross total income is computed, no further deduction there from was permissible for the purpose of arriving at the gross total with a view to allow deduction under various provisions of Chapter VIA. Some of the relevant passages containing important discussions are extracted below:-

> "There is no room of doubt that computation of gross total income of the industrial undertaking for the purpose of deduction u/S. 80-HH and 80-1 operate independently and has to be made without making any deduction under Chapter VIA. Thus, for the purpose of computing gross total income', of such industrial undertaking in respect of which deduction is to be made under Sec. 80-HH or 80-I, deduction quantified under any of the provision can be deducted before computing eligible gross total income for the purpose of computing deduction under other. In other words, for the purpose of computing eligible gross total income to quantify deduction @ 20% under Sec. 80-I and 20 per cent or 25 per cent, as the case may be, under Sec. 80-HH no deduction under either provision can be made for the purpose of computing deduction under the other. In each case gross total income shall have to be computed

without making any reducing it by deduction permitted u/S. 80-HH or 80-1 or for that matter under any other provision of the Chapter VIA, and taken to be basis on the basis of which prescribed percentage is to deduct from such income of the assessee.

The question then arises whether Section 80-HH(9) to which reference has been made and reliance has been placed by the learned counsel for the revenue, provides anything to contrary and militates against our above conclusion. That provision reads as under:

"80-HH (9): In a case where the assessee is entitled also to the deduction under Section 80-I or Section 80-J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this Section."

The language and intent of this provision is clear in itself. While envisaging that all the three deductions viz. u/S. 80-HH, 80-1 and 80-J are simultaneously permissible, and not mutually exclusive, the provision only fixes priority of order in which deduction under each provision is to be adjusted in the gross total income derived from such industrial undertaking to which Section 80-HH or Section 80-I or 80-J respectively apply simultaneously."

13. The general scheme contained in para A of Chapter VIA, on the basis of aforesaid judgments can be summed up as under:-

(a) In general the statute does not prescribe any order of priority in which the various deductions are to be

allowed. Therefore deductions can be claimed by an assessee so as to ensure to his best advantage. There are however, a few places where the statute indicates a priority and these have to be given effect to.

(b) Each relief under each section of Chapter VI-A is a separate one. Each relief operates in a separate realm to fulfill different economic or social objectives. When an assessee is entitled to more than one relief, each relief has to be independently determined. The Courts have held that one relief cannot be abridged or diluted by any other relief which assessee may be rightly entitled.

The amendment:

14. So far so good. However, what needs to be highlighted at this stage is that in all these judgments, the Courts were concerned with the assessment years for the period prior to 1st April, 1999. With effect from 1st April, 1999 amendments were made by inserting Clause-9 in Section 80 IA and clause 13 in Section 80 IB. These provisions read as under:-

> "80-IA (9): Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading 'C-Deductions in respect of certain incomes', and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be"

> Sec. 80IB (13) states that the provisions of sub-sec. (9) to Sec. 80IA shall, so far as may be, apply to the eligible business under this section"

The Question of law and the controversy:

15. We are, in these cases, concerned with the post amendment provisions and, therefore, cases are to be decided in the light of this amendment. In this context, question of law which is formulated in all these cases for determination is as to whether deduction allowed under Section 80 IA is to be reduced from the gross profits for the purpose of computing deduction under Section 80 HHC. There is marginal difference in the language in which the question of law is framed in different appeals. However, essence remains the same and, therefore, our purpose would be served by reproducing the question of law framed in one of these cases. In ITA 267/2008, the question of law has been formulated in the following words:-

> "Whether the Income Tax Appellate Tribunal was correct in law in holding that the business profits as per Explanation (baa) of Section 80 HHC of the Income Tax Act, 1961 was to include the amount of deduction allowable under Section 80 IB of the Act for the purpose of computing deduction under Section 80 HHC of the Act"

16. The contention of the learned counsel for the assessees is that the aforesaid insertion has not made any change in so far as the manner of computation and deduction is to be made under various provisions of Part –C in Chapter VIA. According to them, the only thrust of this provision is that the total deduction to be allowed under

various provisions in Part-C is not to exceed the profits and gains. Total accumulation should not exceed the profits and gains and, therefore, the principle as interpreted in ***JP Tabacco*** (supra) and other judgments and affirmed in ***Mandideep*** case (supra), still hold the field.

17. The Revenue on the other hand insists that introduction of sub Section 9 in Section 80 IA has made a clear departure and legislative intent is manifest in this provision *namely* once the deduction is claimed under Section 80-IA in respect of certain amount of profits and gains, "to the extent of such profits and gains", deduction shall not be allowed and this has to be reduced while computing deduction under other provisions namely Section 80 HHC in the instant cases.

Conflicting views of ITAT and the decision of the Special Bench:

18. This controversy has received attention at the hands of various Benches of the Tribunal. In view of conflicting opinions a three member Special Bench of Chennai ITAT was constituted in the case of ***ACIT*** Vs. **Rogini Garments** *(2007) 294 ITR 15*. Before the decision of Special Bench of Chennai ITA various Division Benches had, in the past, dealt with the issue and decided it mainly in favour of assessee for reasons recorded therein. The Special Bench in case of ***Rogini Garments*** essentially being influenced by the literal interpretation of the provisions of Section 80-IA (9), held that the relief under Section 80-IA should be deducted from the profits and gains of business before computing relief under section 80HHC. Subsequent to the decision of Special Bench of Chennai ITAT (supra) the issue

came up for consideration before the Madras High Court in the case of ***SCM Creations*** *Vs.* ***ACIT*** *(2008) 304 ITR 319* wherein a similar issue as involved before the Special Bench of Chennai ITAT was considered and decided.

19. However, the controversy still persisted as various nuances of the provisions were argued and there was a controversy about the ratio of ***S.C.M****.* decision of Madras High Court and in these circumstances, a five member Special Bench of the Tribunal at Delhi was constituted in the case of ***Hindustan Mint and Agro Product Limited***, *305 ITR (AT) (SB) 401 (Delhi).*

20. This five member Special Bench has decided the question of law in favour of the Revenue. In the meantime, as various Benches had decided the issue differently, these appeals have been preferred. It is clear from the fact that in these batch of appeals the Tribunal has given conflicting judgments and, therefore, some appeals are filed by the revenue while others by the assessees.

The Arguments: Assessees:

21. Now we proceed to take note of the submissions advanced by the various counsels who appeared in these cases on behalf of the assessees.

22. Ms. Kapila who led the team of assessees' counsels submitted that interpretation given by Special Bench in ***Hindustan Mint*** (supra) had the effect of rendering the provisions of Section 80 AB, 80B (5) and 80HHC Explanation (4) clause (baa) inert, lifeless and redundant. She pointed out that Section 80 AB of the Act begins with

a non-obstante clause and was therefore to prevail over Section 80 IA (9). She thus submitted that there appeared to be a head on collision between Section 80AB/80B(5)/80HHC on the one hand and Section 80IA(9)/80IB (13) on the other hand, if rule of literal interpretation is applied. She argued that Section 80AB and Section 80IA (9) operate in same field, viz deductions under Division C of Chapter VI-A. Section 80AB begins with a non-obstante clause, and is the governing & controlling section for operating deduction under Division C of Chapter VI-A. The very foundations of computation of deduction under Chapter VI-A is "gross total income" This was glossed over by the Tribunal. The consequence of the interpretation of Section 80IA (9) given by the Tribunal overrides this non-obstante clause contained in Sec. 80 AB and shifts the foundation base from "gross total income" to "net income". Thus ITAT's interpretation would render sections 80AB and 80B (5), inert, lifeless and redundant. Furthermore, Clause (baa) to Explanation 4 to Sec. 80HHC would become also lifeless. She pointed out that the Supreme Court has held that section 80AB has been given an overriding effect over all other sections in Chapter VIA of the Act {***IPCA Laboratory Ltd***. Vs. ***DCIT*** (2004) 266 ITR 521 (SC) and in the case of ***CIT*** Vs. ***Shirke Constructions Equipment Ltd***. 291 ITR 380 (SC)}.

23. Continuing her submission along this line, Ms. Kapila contended that unlike the language in Section 80AB, the provision of Section 80IA (9) does not contain a non-obstante clause so as to supersede the non-obstante provision of Sec. 80AB, or Section 80B (5). If the provision of Section 80 IA (9) are to be read as diluting all deductions

under the heading 'C' by computing them on reduced profits after deducting relief u/S 80IA or 80IB, then such interpretation would be in manifest contradiction to the provisions of Section 80AB which overrides all the provisions of Chapter VIA and which specifically provide by way of non-obstante clause that in computing deduction under any section under the heading 'C' of Chapter VIA, the foundation base is "gross total income", as defined and explained by Rajasthan High Court in ***Chokshi's case*** (supra).

24. After projecting the aforesaid scenario where Section 80 AB of the Act was to be given primacy, her submission was that rule of "literal interpretation" could not be applied, as done by the Special Bench which resulted in serious anomalies. Therefore, challenge was to harmonize the two sets of provisions by applying the principle of harmonious construction. Her submission was that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible effect should be given to both. The Courts have also to keep in mind that an interpretation which reduced one of the provisions to a 'dead letter' or 'useless lumber' is not harmonious construction. To harmonize is not to destroy any statutory provision. She suggested that it was possible to harmonize all the statutory provisions. The object of insertion of Section 80-IA (9), was to prevent deduction of more than 100 per cent of profits and gains of the undertaking by claiming multiple deductions under different sections. It was not to dilute claims of deduction under more than one section, under Chapter VI-A, but only to ensure that the sum total of the deductions so claimed by the assessee under different sections does not exceed

the profits and gains of the undertaking in respect of which deductions are allowable.

25. This has been explained in CBDT Circular No. 772, dated 23.12.1998 extracted herein under:-

> "1 Under the provisions of Chapter VI-A of the Income Tax Act, various deductions from the profits and gains are allowed to specified appellants, subject to fulfilling certain requirements specified under the relevant sections. The total deductions under Chapter VIA of the IT Act are restricted to the gross total income in respect of the appellant as a whole.
>
> 2. However, it was noticed that certain assessees claimed more than 100 per cent deduction on such profits and gains of the same undertaking, when they were entitled to deductions under more than one section of Chapter VI-A. With a view to providing suitable statutory safeguard in the Income-tax Act to prevent taxpayer from taking undue advantage of existing provisions of the Act by claiming repeated deductions in respect of the same amount of eligible income, even in cases where it exceeds such eligible profits of an undertaking or a hotel, in built restrictions in section 80HHD and 80 IA have been provided by amending the section, so that such unintended benefits are not passed on to the appellant.
>
> 3. These amendments will take effect from 1-4-1999 and will accordingly, apply in relation to assessment year 1999-2000 and subsequent years".

26. She argued that this Circular made it abundantly clear that the only and limited object of the amendment to Section 80IA (9) was to ensure that an assessee does not claim more than 100% of

deductions by claiming multiple deductions on same profits and gains Under Sec. 80 IA and 80 IB under certain circumstances 100% deduction is available on profits of an undertaking. In cases where the assessee is eligible for deduction under more than one section then deduction will be restricted to 100% of the eligible profits. In this way limbs (a) and (b) of the Sec. 80 IA (9) amendment get harmonized.

27. She also stressed o the binding nature of Circulars issued by CBDT and constitute *contemporanea expositio* furnishing legitimate aid in the construction of statutory provisions and are binding on Revenue authorities { See ***CIT*** *Vs.* ***K.P. Varghese*** *131 ITR 597 (SC)}.* Further the Supreme Court affirmed in ***Union of India*** *Vs****. Azadi Bachao Andolan*** *(2003) 263 ITR 706 that* Circulars issued by CBDT are binding on the Department even if they deviate from the provisions of the Act. In CIT Vs. Vaidya (M.K.) 224 ITR 186 the Karnataka High Court held that Circulars issued by the CBDT are not only binding on the Income Tax Department but are also in the nature of *contemporanea expositio* furnishing legitimate aid in the construction of a provision.

28. Other counsels argued on almost similar lines. Mr. Anoop Sharma also highlighted the conflict between the two sets of provision and submitted that the rule of “literal interpretation” could not be invoked in such a scenario while interpreting sub-Section 9 of Section 80 IA. He suggested that departure from this rule was legitimate in such circumstances, quoting following passage from ‘Principle of Statutory Interpretation’ by G.P. Singh:-

> "It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. **It is the duty of the Courts to avoid a "head on clash" between two sections of the same Act and whenever it is possible to do so to construe provisions which appear to conflict so that they harmonise".**

29. He also referred to various judgments of the Apex Court in this behalf, *namely*; ***Raj Krishna Bose Vs. Binod Kanungo,*** *AIR 1954 SC 202,* ***Sultana Begum*** *Vs* ***Prem Chand Jain****, AIR 1997 SC 106,* ***Siraj-ul-Haq and Others*** *Vs.* ***The Sunni Central Board of Waqf U.P.*** *AIR 1959 SC 198* and ***D. Sanjeevayya*** *Vs****. Election Tribunal*** *AIR 1967, SC 1211.*

30. He thus reiterated the submissions made by Ms. Kapila namely that the a avowed objective of inserting sub Section (9) of Section 80 IA was limited to the extent that it ensures that the total deductions under Chapter VI A of the Act are restricted to the 'gross total income' in respect of the assessee as a whole, as was clear from the Circular No. 772 dated 23.3.1998 of CBDT.

31. Mr. Kanan Kapoor argued in the same vein with added passion and additionally highlighted that wherever benefit granted under one provision is to be reduced in other provisions, specific language

to this effect is used in those proceedings and gave the following examples:-

> "Section 80P (3): In a case where the assessee is entitled also to the deduction under Section 80 HH or Section 80HHA or Section 80 HHB or Section 80 HHC, or Section 80 HHD or Section 80-I or Section 80-IA or Section 80J or Section 80 JJ, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under Section 80 HH, Section 80 HHA, Section 80 HHB, Section 80 HHC, Section 80HHD, Section 80-I, Section 80-IA Section 80 J and Section 80JJJ"
>
> "80Q (2): In a case where the assessee is entitled also to the deduction under Section 80HH or Section 80HHA or section 80HHC or section 80-1 or section 80-IA or section 80J or section 80P, in relation t any part of the profits and gains referred to in sub-section (1) the deduction under sub-section (1) shall be allowed with reference to such profits and gains included in the gross total income as reduced by the deductions under section 80HH, Section 80 HRA, section 80 HHC, section 80, section 80-IA, section 80J and section 80P"

32. Dr. Gupta, learned counsel appearing for another other assessee also gave similar examples of some other provisions. In respect of the circular of CBDT, he further highlighted that this was issued simultaneously with the insertion of sub section (9) to Section 80-IA and was thus *contemporanea expositio* and binding on the

revenue when the reading of this circular clearly relaxes the rigor, even if was contrary to law as held in ***Navnit Lal C. Javeri Vs. CIT***, *56 ITR 198*. He also pointed out that alongwith amendment to Section 80-IA with insertion of sub-Section (9), Section 80HHD was also amended but the language of Section 80 HHD was made much clearer by specific exclusion therein.

33. Predicated on that, he also stressed that the intention behind sub section (9) was not which is projected by the department now and it was restricted only to ensure that total deduction claimed under various provisions should not exceed total gross profit.

34. Mr. Vohra additionally submitted that Section 80 HHC was a complete Code in itself and sub Section (3) thereof prescribed as to how the profits are to be computed. It could not be circumscribed or influenced by an altogether different provision namely sub Section (9) of Section 80-IA which provided totally different basis of the computation. He referred to the judgment of ***Godrej Agrovet Ltd.*** Vs. ***Asstt. Commissioner of Income Tax.*** *290 ITR 252.*

The Arguments: Revenue:

35. Onslaught of all these submissions of the assessees' counsel was bravely faced by Ms.Prem Lata Bansal who appeared on behalf of the department in all these cases and emphatically countered them. She heavily relied upon the detailed analysis of these provisions by the five members of Special Bench of the Tribunal in ***Hindustan Mint*** (supra) and submitted that the Tribunal had rightly appreciated and answered the controversy. Her argument was that

Section 80-IA/80IB of the Act provides for deduction of specific percentage of profits and gains derived from the eligible businesses which are included in the gross total income of the assessee. She submitted that the expression "profit derived from' has received judicial recognition. It has been repeatedly held by the Apex Court in various decisions that incomes which have first degree nexus with the eligible business would be regarded as profits and derived from the eligible business and hence would qualify for deduction under the said section (refer CIT Vs. Sterling Foods; 237 ITR 579 (SC) , Pandian Chemicals Vs. CIT: 262 ITR 278 (SC) Liberty India Ltd: 317 ITR 218 (SC)). In other words, the amount forming the basis of deduction under the said section (including sections 80-IA/IB) is an artificial figure, computed having regard to the principles laid down in the said judgments.

36. Coming specifically to the provision, which is the centre of discussion controversy, her submission was that on a careful consideration of the provision of sub section (9) of section 80 IA of the Act, it will be noticed that the said sub section has three limbs, as under:-

> (a) Where any amount of profits and gains of an undertaking is **claimed and allowed under this section** for any assessment year;
>
> (b) deduction to the extent of such profits shall not be allowed under any other provisions of this Chapter under the heading C-deductions in respect of certain income", and

(c) deduction shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise.

37. Her analysis was that the first limb refers to the profits and gains **claimed and allowed** under Section 80 IA/80IB of the Act. Thus, sub-section (9) refers to the amount of profits and gains **which is not only claimed but also allowed** under sections 80IA/80IB of the Act.

38. The second limb of sub-section (9) of Section 80-IA prohibits double allowance of such profits, i.e. the profits referred in the first limb. The expression 'such profits', therefore, means and refers to the profits claimed and allowed as deduction under Section 80IA/80IB of the Act. The second limb provides that 'such profits', i.e. the profits which have been claimed and allowed as deduction under Section 80IA/80IB, **shall not be allowed** as deduction under any other provisions of Chapter VIA-C of the Act. According to her , there are two stages of claiming deduction under any section under the provisions of Chapter VI-A of the Act. **The first stage is computation of deduction under the relevant section and the second stage is allowance of deduction in accordance with the scheme of the Act.** The provisions of sub-section (9) of Section 80IA of the Act, it was submitted **only governs the second stage, i.e. allowance** of deduction and does not regulate/govern the first stage, viz.,computation of deduction. **The first stage, i.e. computation of deduction, is primarily regulated by the formulae/method prescribed in the section under which deduction is being computed.**

39. She argued that the third limb of sub-section (9) of Section 80 IA only carves out a further condition in the form of an outer circle to provide that the total deduction claimed in respect of profits of the same undertaking, viz 80 IA/80 IB as well as other sections of Chapter VIA- C, shall not exceed the total profits of the said undertaking.

Our Analysis:

40. We have considered the aforesaid elaborate submissions made by counsel for various parties appearing in these matters. We have stated in detail the scheme of Chapter VI-A of the Act and case law up to the stage of amendment, explaining the said Scheme. No doubt, as the unamended provisions stood, the Courts had interpreted those provisions to mean that they are independent of each other. It was categorically laid down that a new industrial unit can claim deduction under Section 80 HHC as well under Section 80-IA of the Act (or for that matter any other provision of this Chapter) on the gross total income independently and for granting deduction under Section 80-I of the Act, the said income was not to be reduced balance after taking into account the benefit under Section 80 HH of the Act. The legal position was that the statute did not prescribe any order of priority in which the various deductions are to be allowed as each relief under each section of Chapter –VI A was separate one, the assessee could be entitled to more than one relief, and each relief was required to be independently determined. The question is as to whether insertion of sub Section (a) of Section 80 IA and sub-Section (13) of Section 80-IB of the Act has made any

difference to this position. Though we have already reproduced these provisions in the earlier part of this judgment, we are extracting these provisions again to maintain proper sequential continuity in our discussion:-

> "**80 IA (9)**
> Where any goods held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date".
>
> **Sub-Section (13) of Sec.80IB**.
>
> The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section"

41. By sub Section (13) of Section 80 IB of the Act provisions of sub-Section 9 to Section 80 IA are made applicable to Section 80 IB. There is no quarrel about this. Therefore, the interpretation which is to be given to sub Section (9) to Section 80 IA will determine the fate of these cases.

42. When we make an attempt to understand this provision, by reading the plain language as it appears i.e. applying the test of literal construction, it manifestly evidence the following status:-

(a) Once an assessee is allowed deduction under Section 80 IA, "to the extent of such profits and gains" he is not to be allowed further deductions under Chapter-C;

(b) In no case the deduction shall exceed the profits and gains of such eligible business of Undertaking or Enterprise, as the case may be.

43. The expressions in these provisions are very crucial which are "deduction to the extent of such profits" and the word "and" occurring therein. The first expression very clearly signifies that if an assessee is claiming benefit of deduction of a particular amount of profits and gains under Section 80 IA, to that extent profits and gains are to be reduced while calculating the deduction under the Heading-C of Chapter VI A of the Act. Further the word "and" is disjunctive which would mean that the other provision is independent and the first one namely total deductions should not exceed the profits and gains in a particular year. Even a layman who has some proficiency in English would understand the meaning of this provision in the manner we have explained above. It would, therefore, be clear that this provision aims at achieving two independent objectives delineated above. It cannot be limited to second objective alone thereby annihilating the first altogether and making it otiose. If we accept the contention of learned counsel for the assessees, it would lead to this result which has to be avoided.

44. Law on interpretation is clear. If the language of the statute is plain and capable of one and only one meaning, that obvious meaning is to be given to the said provision. Rules of interpretation are applied only if there are ambiguities when the purpose of interpretation is to ascertain the intention of the law i.e*. mens legis,* it is based on assertion by adopting plain meaning of the statute in the absence of any ambiguity.

45. No doubt, we are in the era of purposive interpretation, which means: to understand the purpose with which that a particular provision was enacted or inserted by the legislature. Unfortunately, for the assessees, even when we view the matter from that angle, we find that the purpose behind introducing this provision was to ensure that an assessee does not get deduction on the amount of profits and gains accorded in one provision. To that extent, it is to be reduced while considering his claim for such deduction under the other provision under the head-C of Chapter VI A of the Act. Other purpose was to ensure that the total deductions allowed to an assessee under different provisions of Heading -C does not exceed the total profits and gains in that particular year.

46. We are, therefore, inclined to affirm the view taken by the Special Bench of Income Tax appellate Tribunal in ***Assistant Commissioner of Income-Tax*** *Vs.* ***Hindustan Mint & Agra Products P. Ltd.*** 315 ITR 401. The Special Bench consisting of five members has undertaken very laborious and elaborate exercise. The submissions which were made by various counsel appearing for the assesses were almost the same which are raised before us and have

been dealt with by the Special Bench suitably, nicely and with finesse. The contention that Section 80 IA and Section 80 HHC are to be given effect independently of each other was expressly turned down by the Special Bench, affirming its earlier view taken in ***Rogini Garments*** (supra). The Special Bench of the Tribunal rightly held, as discussed by us as well, that there are two restrictions in the statutory provisions contained in Section 80 IA (9) which are:-

> "(a) Where an assessee is allowed deduction under this section (80-IA or 80 IB), deduction to the extent of such profits and gains shall not be allowed under any other provision of this chapter (Heading "C.-Deduction in respect of certain incomes"), and
>
> (c) Deduction shall in no case exceed the profits and gains of the undertaking or hotel as the case may be"

47. In the process, the Tribunal also dealt with CBDT Circular 772 and repelling the contention of the assessees based thereupon expounded the position contained in the said Circular as under:

> "It is seen that the Central Board of Direct Taxes Circular No. 772 clarified and only dealt with (b) above and did not deem it necessary to make reference to restriction (a). In order to accept the contention of the assessee, we would have to exclude portion of the provision covered by (a) and ignore the restriction placed therein. Why such course should be adopted when words used by the Legislature, "claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions" are quite clear

> and unambiguous and are to be given effect to as rightly contended by the Revenue. The profits or gains of industrial undertaking, which has already been allowed as a deduction under Section 90-IA, such profit (to the extent) cannot be taken into consideration for allowing deduction under any other provision of this Chapter "C". If profit which has already been allowed as a deduction is again taken into consideration for computing deduction under any other provision referred to above, then restriction (a) above is disregarded and ignored. It cannot be done without doing violence to the language of the provision. We see no justification for adopting a course prohibited by the Legislature. It is not possible to ignore the restriction placed as (a) nor is it possible to accept that in Circular No. 772, there is a suggestion to ignore restriction (a) mentioned above. As per the settled law, courts and Tribunals must see the mandate of the Legislature and give effect to it as rightly argued by the Revenue. Therefore, restriction (a) above, has to be respected and followed."

48. With regard to the submission of the counsel of the assessees based on section 80 AB of the Act which provides that deduction under each Section of VI-A is to be computed independently, the Tribunal answered by pointing out that not only the total scheme of the statute but Scheme of every Section is to be read and interpreted and every word given proper meaning. It noticed that:-

> "In several sections under Chapter VI-A, it is provided that if deduction is allowed under that section, then no deduction under any other section under Chapter VI-A would be allowed. Thus, where deduction under such specific section has been

claimed and allowed, there is no need to compute deduction permissible under other sections of Chapter VI-A. It would be a futile and useless exercise. Therefore, no question of computing deduction in the above circumstances would arise and section 80-AB would have no application. The section provides no solution to the problem where deduction is to be computed under more than one section of Chapter VI-A. It cannot follow that other sections providing modification or change in the manner or mode of computation are to be ignored. There are several sections like section 80 HHA, 80HHA (5), 80 HHA (6) providing manner of deductions or preferential treatment to one deduction over another when the assessee is entitled to deduction under more than one section of Chapter VI-A. It is provided that effect shall first be given to a particular section. All the sections are to be read together harmoniously. The fact that section 80 AB starts with a non-obstante clause does not make any difference as we see no conflict in various provisions. The restriction placed on double deduction of the same eligible profit cannot be read as absurdity or conflict. Having regard to the above provisions, putting ban on allowability of deduction under other sections, computation of deduction under those sections would serve no purpose. It cannot follow from the above that restriction of those sections are not to be given effect to as scheme in those sections is different from scheme of section 80AB which starts with non-obstante clause "Notwithstanding anything..." Arguments advanced on behalf of the assessee, if accepted, would lead to complications not envisaged by the Legislature. We find it difficult to accept them. Therefore, in a case where deduction

> under section 80 IA has been allowed, then in the light of the provisions of sub Section (9-A), such profits and gains (to the extent) shall not be allowed under any other provision of the relevant Chapter. For example, if total profit of undertaking is ₹ 100 and 20 per cent is allowed as a deduction under section 80-IA or 80-IB, then for purposes of other provisions like section 80HHC, on such 20 per cent of profit, no deduction can be allowed. The deduction under other sections has to be computed after reducing such profit of 20 per cent. In other words, it will be computed with reference to 80 per cent of the profit. Such deduction cannot be governed by section 80 AB alone as it is a case in which deductions under more than one section of Chapter VI-A is to be allowed. Adjustment of deductions under various sections is to be made. It is not a case where provision before making any deduction under Chapter VI-A is applicable. Therefore, provision of Section 80 AB is of no assistance in resolving the problem in hand."

We entirely agree with the aforesaid meaning given to Section 80 AB of the Act.

49. Here, we would like to deal with one submission of the learned counsels for the assessees, which was spearheaded by Ms. Kapil, Advocate. She emphatically argued that in view of a non-obstante provision contained in Section 80 AB of the Act, which is to be given primacy and should prevail over Section 80 IA (9). On this basis, her submission was that Section 80 AB of the Act was coming in conflict with Section 80IA AB of the Act with Section 80 IA (9) and 80 IB (13) if the Rule of Literal Interpretation is applied and, therefore, the two provisions needed to be harmonized. According to her, otherwise,

Section 80 AB would be rendered otiose. We find entire foundation of this argument without any basis. there is no conflict within the two provisions as was painstakingly tried to be demonstrated by Ms. Kapila. Section 80AB deals with computation of deduction on "gross total income" which purpose is achieved even otherwise on reading these provisions and interpreting the same in the manner done by her herein before. On the contrary, if the interpretation suggested by Ms. Kapila is accepted, it will not only do violence to the clear mandate of Section 80 IA (9) but shall have the effect of rendering that provision redundant though specifically introduced by the Legislature with the purpose of achieving clear objective.

50. We are not in a position to subscribe to the contention of the learned counsel for the assessees that where the Legislature intended to deduct the amount out of some other deduction a different phraseology was used as noticed above. This was sought to be demonstrated by referring to sub Section (5) of Section 80 HHB, sub Section (4) of Section 80 HHBA and sub Section (4) of Section 80-IE etc. which provisions start with the use of a non-obstante clause. Merely because section 80-IB is not worded in a similar fashion would not mean that we have to do the violence with the plain language used in that provision, which is capable of only one meaning. A particular section of an enactment, the intention of which is otherwise manifest, cannot be read by adopting such an insidious approach, by referring to other sections. It is well known that the legislature adopts different ways and means in order to achieve its goal and there is no justification for insistence of identical language. Likewise, as rightly point out by the Special Bench of the Tribunal, the

notice and objects of accompanying reasons are only an aid to construction. Such aid to construction is needed when literal reading of the provision leads to an ambiguous result or absurdity.

51. We thus do not find any force in any of the arguments advanced by the counsel appearing for the assessees and cannot persuade ourselves to given an interpretation to the aforesaid provisions contrary to what is indicated above, or what is sought to be suggested by them. Accordingly, we hold that for the purpose of computing deduction under Section 80 HHC of the Act, deduction already allowed under Section 80-IA has to be reduced. The question of law thus stands answered in favour of the Revenue and against the assessee.

52. As a consequence, we allow the appeals filed by the Revenue and set aside the impugned decision of the Tribunal in those cases. On the other hand, the appeals preferred by the assessees stand dismissed.

53. No costs.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

NOVEMBER 29, 2010
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