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		<p>computation of income has to be in accordance with the provisions of the Act and that any computation in accordance with the provisions of the Act would take into account not only profits but losses also. The following passage from the said decision sums up the legal position :</p> <p>“Section 80AB is also in Chapter VI-A. It starts with the words “where any deduction is required to be made or allowed under any section of this Chapter”. This would include section 80HHC. Section 80AB further provides that “notwithstanding anything contained in that section”. Thus section 80AB has been given an overriding effect over all other sections in Chapter VI-A. Section 80HHC does not provide that its provisions are to prevail over section 80AB or over any other provision of the Act. Section 80HHC would thus be governed by section 80AB. The decisions of the Bombay High Court and the Kerala High Court to the contrary cannot be said to be the correct law. <u>Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration.</u>” (emphasis supplied)</p> <p>In <i>Motilal Pesticides (I) Pvt. Ltd. Vs. CIT</i>; 243 ITR 26 (SC) one of the questions which fell for consideration was whether the assessee was entitled to deduction under Section 80HH of the Act on the gross profit and not the net profit derived by the assessee for the assessment year under consideration. The Supreme Court noticed its earlier decision in <i>Distributors (Baroda) Pvt. Ltd. Vs. Union of India</i>; 155 ITR 120 (SC) and held that deduction was to be allowed under Chapter VI-A of the Act only on the net</p>



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		<p>income and not the gross income earned by the assessee. The Court reiterated that Section 80AB introduced with retrospective effect from 1<sup>st</sup> April, was only clarificatory in nature and that the decision in Distributors (Baroda) Pvt. Ltd. (supra) case stated the legal position irrespective of the introduction of the said provision. The following passage in this regard is apposite:</p> <p>“.....In Distributors (Baroda) Pvt. Ltd.'s case [1985] 155 ITR 120 (SC), however, this court specifically overturned its earlier decision in Cloth Traders (P) Ltd.'s case [1979] 118 ITR 243 (SC) and held that deduction is to be allowed only on the net income and not on the gross income. With reference to Section 80AB, this court said it was merely of a clarificatory nature and the decision of this court in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 is thus irrespective of section 80AB of the Act. The High Court, therefore, relying on the decision of this court in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 answered the question in favour of the Revenue and against the assessee.”</p> <p>“.....<u>The effect of section 80AB was now that deduction would have to be made from the net income and not from the gross income. But then, in all fairness, Mr. Ramamurti also referred to another decision of this Court in H.H. Sir Rama Varma Vs. CIT [1994] 205 ITR 433, where this court observed that on a parity of reasoning with section 80 AA as given in Distributors (Baroda) P. Ltd.'s case [1985] 155 ITR 120 (SC), it must be held that section 80AB was enacted to declare the law as it always stood in relation to the deductions to be made in respect of the income specified under the head "C" of Chapter VI-A of the Act.</u>” (emphasis supplied)</p> <p>To the same effect is a Division Bench decision of this Court in Commissioner of Income Tax Vs. Atam Ballabh Finance Pvt. Ltd.; 258 ITR 177 (SC)</p>



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		<p>485 where the issue that had fallen for consideration was whether while computing the income all provisions of Chapter VI-A are required to be applied before allowing the deductions. Relying upon the decision of the Supreme Court in Distributors (Baroda) P. Ltd. Vs. Union of India; 155 ITR 120 (supra) this Court observed thus :</p> <p>“D. So far as question No.2 is concerned, the Commissioner of Income Tax (Appeals) and the learned Tribunal appear to have lost sight of the definition of “Gross total income”. “Gross total income” means the total income computed in accordance with the provisions of the said Act, before making any deduction under this Chapter, as contained in sub-section (5) of section 80B of the said Act. There, thus, cannot be any doubt whatsoever that while computing the income, all provisions are required to be applied and thereafter only the deductions had to be allowed.”</p> <p>The Tribunal has in the instant case relied upon the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. Vs. CIT; Gujarat; 113 ITR 84, Motalal Pesticides (I) Pvt. Ltd. Vs. CIT; 207 CTR 60, H.H. Sir Ram Varma Vs. CIT 205 ITR 433 and Grasim Industries Ltd. Vs. CIT &amp; Ors.; 245 ITR 677 to hold that deduction under Section 80 I could be computed only after allowing development rebate and depreciation under Section 30 to 43A from the total income or commercial profit of the assessee. It has therefore followed the very same line of reasoning as has prevailed with the apex court in the judgments referred to earlier.</p>



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		<p data-bbox="746 230 1592 275">No substantial question of law arises for our consideration.</p> <p data-bbox="547 315 1129 353">appeal fails and is accordingly dismissed.</p> <p data-bbox="1129 488 1385 533">T.S. THAKUR, J</p> <p data-bbox="1129 622 1497 667">H.N. CHATURVEDI, J</p> <p data-bbox="547 667 890 712">NOVEMBER 24, 2005</p> <p data-bbox="547 719 587 752">sa</p> <p data-bbox="842 801 1026 846">ITA 13/2003</p> <p data-bbox="1225 801 1385 846">page 5 of 5</p>