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

% Judgment delivered on : 24.09.2008

\+ **ITA Nos. 682 & 692 /2008**

COMMISSIONER OF INCOME TAX, DELHI-IV ..... **Appellant**

-versus-

ENCON INTERNATIONAL (P) LTD ..... **Respondent**

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal
For the Respondent : Dr Rakesh Gupta, Ms Poonam Ahuja, & Ms Aarti Saini

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. These two appeals are taken up together as they arise out of the common order passed by the Income Tax Appellate Tribunal on

31.08.2007. The Tribunal had disposed of the assessee's appeal being ITA No. 4292/Del/2005 and revenue's appeal being ITA No. 4512/Del/2005, both pertaining to the assessment year 2002-03, by the impugned order.

2. The assessee exported goods worth Rs 206.62 lacs. Out of this the assessee had exported goods worth Rs 102.13 lacs to General Specialised Steal Manufacturing Company (GSSMC) situated in Amman, Jordan. The balance export of Rs 104.48 lacs was made to other non-Jordan companies.

3. The assessee claimed deductions under Section 80HHC of the Income Tax Act, 1961, in respect of the said exports. The Assessing Officer disallowed the claim of the assessee on both counts. The Assessing Officer came to the conclusion that the sales to GSSMC, Jordan were part of the contract between the assessee and the said company, and, therefore did not constitute part of the assessee's trading activity. In so far as the sales to non-Jordan companies were concerned, the Assessing Officer was of the view that these sales were ultimately for the benefit of the Jordan company, though they were routed through the non-Jordan companies.

Consequently, the Assessing Officer denied the benefit of section 80HHC of the said Act to the assessee on both counts.

4. The assessee being aggrieved by the said order preferred an appeal before the Commissioner of Income-tax (Appeals) who confirmed the findings of the Assessing Officer with regard to the sales made to the Jordan company i.e., GSSMC. However, with regard to the sales made to the non-Jordan companies, the Commissioner of Income-tax (Appeals) came to the conclusion that these parties did not have any relationship with GSSMC and the spares sold to them had been used by them in their furnaces installed in their premises. Consequently, the Commissioner of Income-tax (Appeals) held that there was no reason not to give deduction under section 80HHC of the Act on the exports made to those other parties.

5. Being aggrieved by the confirmation of the disallowance in respect of the exports made to GSSMC, Jordan, the assessee filed the said appeal being ITA No. 4292/Del/2005. The revenue also, being aggrieved by the fact that the Commissioner of Income-tax (Appeals) had deleted the additions made by the Assessing Officer

on account of exports made to the non-Jordan companies, preferred the said appeal being ITA No. 4512/Del/2005.

6. The Income Tax Appellate Tribunal has considered both the aspects in great detail. In so far as the sales to GSSMC, Jordan are concerned, the Tribunal noted that two contracts had been entered into between the assessee and the GSSMC. One contract was for the installation and commissioning of a furnace. The said contract was dated 07.05.1997. The other contract was for the errection, commissioning and running of the rolling mill. That contract was dated 14.06.1997. After examining the various purchase orders and the other evidence on record, the Tribunal came to the conclusion that the exports made by the assessee to the Jordan company were not in connection with the said contracts. The Tribunal specifically held that the impugned supplies on which the claim of deductions under section 80 HHC had been made by the assessee during the year under appeal were independent of the contracts dated 14.06.1997 and 07.05.1997. Consequently, the Tribunal held that the assessee had made export of goods during the year under appeal as a result of fresh purchase orders. The Tribunal, therefore,

concluded that the assessee was entitled to the deduction under Section 80 HHC as the twin conditions of the exports having been made and the sale proceeds having been received in convertible foreign exchange receipts had been satisfied. Consequently, the order of the Commissioner of Income-tax (Appeals) on this aspect of the matter was set aside and the Assessing Officer was directed to allow the deductions under section 80HHC.

7. With regard to the sales made to non-Jordan parties, the Tribunal confirmed the findings of the Commissioner of Income-tax (Appeals) and held that the assessee exported goods on the basis of the orders placed on the assessee and the assessee had received the sale proceeds in convertible foreign exchange. The Tribunal concluded that in the absence of anything adverse, the Commissioner of Income-tax (Appeals) was justified in allowing the deductions in respect of the sales of Rs 104.48 lacs. It is also pertinent to note that the said deductions under section 80HHC of the Act under similar circumstances had been allowed by the Assessing Officer in respect of the financial years 1999-00 and 2000-01.

8. The decision of the Tribunal rendered on the basis of the facts determined by it cannot be faulted. No substantial question of law arises for our consideration. The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

September 24, 2008
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