



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

% Judgment delivered on : 31.07.2008

+ **ITA No. 635/2007**

**COMMISSIONER OF INCOME TAX**

**..... Appellant**

-versus-

**JYOTI APPARELS**

**..... Respondent**

**Advocates who appeared in this case:**

For the Appellant : Ms. Prem Lata Bansal

For the Respondent : Mr. Rajiv Kumar Garg

**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. Admit.
2. The following substantial question of law is framed :-

“Whether the Income Tax Appellate Tribunal was correct in law holding that the interest amount of



Rs.41,22,165/-earned by the assessee on FDRs was a business income and would qualify for relief under Section 80HHC of the Income Tax Act, 1961?”

3. This question need not detain us for very long, in as much as, the same has already been decided by this Court in several decisions starting from **CIT vs. Sriram Honda Power Equipment : 289 ITR 457 (Delhi)** and including **CIT vs Jyoti Apparels** (the present respondent) **in ITA NO. 756/2006** decided on 19.01.2007. These decisions clearly indicate that the above question has to be answered in favour of the revenue and against the assessee.

4. The following observations of this Court in *Sriram Honda Power Equipment (Supra)* need to be emphasized:-

“..... We are, therefore, of the view that where surplus funds are parked with the bank and interest is earned thereon it can only be categorized as income from other sources. This receipt merits separate treatment under Section 56 of the Act which is outside the ring of profit and gains from business and profession. It goes entirely out of the reckoning for the purposes of Section 80HHC. To give effect to this position, the Assessing Officer while computing profits of the export business will have to remove from the debit side of the profit and loss account the corresponding interest expenditure that has been “laid out” to earn such income from other sources. Otherwise this will depress the profits by an amount which is out of the reckoning of Section 80HHC, a consequence not intended to be brought about.”



5. The Assessing Officer shall keep the above observations in mind. With the abovesaid discussion, the appeal is allowed and the question is answered in favour of the revenue and against the assessee.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**July 31, 2008**  
**mk**