



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

% Judgment delivered on: 21.04.2010

+ **ITA 352/2010**

**COMMISSIONER OF INCOME TAX** ... Appellant

- versus -

**M/S SICLAIR EXPORTS LTD** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Abhishek Maratha, Sr Std Counsel

For the Respondent : None

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.K. JAIN**

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

**BADAR DURREZ AHMED, J (ORAL)**

1. This is an appeal filed by the Revenue against the order dated 14.05.2009 passed by the Income Tax Appellate Tribunal in respect of the Assessment Year 1995-96 and it arises from the assessee's appeal before the Tribunal, being ITA No.762/DEL/2008.

2. The assessee had claimed deduction under Section 80HHC without reducing brought forward losses. In the quantum proceedings, the additions have been confirmed by the Tribunal. In separate proceedings under Section 271(1)(C) of the Income Tax Act, 1961, both the Assessing



the assessee. However, the Income Tax Appellate Tribunal, by virtue of the impugned order, deleted the said penalty on the ground that the assessee's claim of deduction in 80HHC without reducing brought forward losses was passed in view of the three decisions of High Courts. The Tribunal further held that the matter was ultimately decided against the assessee by the Tribunal following the decision of the Supreme Courts in the case of **IPCA Laboratories Limited**: 266 ITR 521 (SC). The Tribunal correctly took the view that when the assessee filed return, there was a difference of opinion and there were three decisions in favour of the assessee which was ultimately decided against the assessee only after the return was filed by him and consequently, the assessee cannot be accused of concealment of particulars of income or of furnishing inaccurate particulars of income.

3. The learned counsel for the Revenue submitted before us that all the three decisions referred to by the Tribunal did not apply to the facts of this case and there was only one of them, namely, **CIT vs. Gogineni Tobacco Limited** : 238 ITR 970 (AP) which was relevant to the facts and circumstances of the present case. Be that as it may, as long as there was a decision of a High Court and there was no contrary decision of the jurisdictional High Court or of the Supreme Court when the assessee filed the return, it cannot be said that the assessee, having placed reliance on the decision of the Andhra Pradesh High Court, had concealed any particulars or had furnished inaccurate particulars of income. There is no question of imposing a penalty in such a case. The Tribunal has correctly decided in



law arises for our consideration.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**V.K. JAIN, J**

**APRIL 21, 2010**

**bg**