



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

{ITA No.642 of 2007}

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Judgment Delivered On: 8<sup>th</sup> July, 2010

THE COMMISSIONER OF INCOME TAX  
DELHI-IV,  
NEW DELHI.

... APPELLANT

THROUGH: Ms. Prem Lata Bansal, Advocate

VERSUS

ELTEC SGS (P) LTD., F-225A, SAINIK FARMS,  
NEW DELHI.

...RESPONDENT

THROUGH: Mr. Kaanan Kapur, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI  
THE 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. (ORAL)

1. In this appeal filed by the Revenue against the order dated 30<sup>th</sup> June, 2006 passed by Income Tax Appellate Tribunal, the following question of law was framed for consideration:-

“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.”

2. The aforesaid question of law arose for consideration in the light of the following factual facts:-



(hereinafter referred to as 'the Act'). The deduction under Section 80 IB of the Act was in respect of duty drawback claimed by the assessee in respect of exports made by it. This deduction under Section 80 IB of the Act was allowed by the Assessing Officer. However, while computing deduction under Section 80HHC of the Act, the Assessing Officer reduced the amount allowed as deduction under Section 80IB for the purpose of computing "business profits" of the assessee. The Tribunal in its judgment held that provisions under Section 80IB of the Act on the one hand and Section 80HHC on the other hand are independent and while computing deduction under Section 80 HHC of the Act, deduction already allowed under 80IB of the Act is not to be taken into consideration. Thus, in this factual background the aforesaid question was formulated for consideration in the present appeal.

3. Further, some subsequent events which have taken place have rendered the aforesaid question redundant. Whether the assessee was entitled to deduction under Section 80 IB of the Act at all or not in respect of the said duty drawback was also bone of contention. Though, the assessee had succeeded till the stage of High Court holding in his favour *namely* the assessee was entitled to deduction under Section 80 IB of the Act in respect of duty drawback, the Supreme Court in appeal filed by the Revenue set aside the judgment of this Court relying upon its earlier judgment reported in 317 ITR 218. Copy of the Supreme Court order passed in the case of assessee is produced before us, relevant portion whereof reads as under:-



The issue is squarely covered in favour of the Department vide our judgment in the case of M/s. Liberty India Vs. C.I.T., Karnal, reported in 317 ITR 218.

Accordingly, civil Appeal stands allowed.  
No order as to costs."

4. Mr. Kapur, learned counsel appearing for the respondent makes statement at the Bar that under Section 80 IB of the Act the deduction was claimed only in respect of duty drawback and, therefore, the consequences of the aforesaid judgment is that no deduction is allowed to the assessee under Section 80 IB of the Act. In that view of the matter, the question of deduction of the amount allowed under Section 80 IB of the Act for the propose of computing deduction under Section 80 HHC of the Act does not arise at all. It goes without saying that deduction computed under Section 80 HHC of the Act has to be without any other deduction and, therefore, the effect of computation as per the order passed by the Tribunal, (without commenting upon as to whether the legal issue decided by the High Court was right or wrong) is correct and deduction has to be allowed taking into account the gross total income.

5. This appeal stands disposed of accordingly.

**(A.K. SIKRI)**  
**JUDGE**

**(REVA KHETRAPAL)**  
**JUDGE**

**JULY 8, 2010.**  
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