

**22 to 24 #****% 01.02.2011**

Present: Ms. Rashmi Chopra, Advocate for the appellant/Revenue.
Mr. Ajay Vohra, Advocate for the respondent/Assessee.

(Common Orders)**+ ITA Nos. 1319-21/2009*******

Three issues are raised in these appeals which pertain to the same assessee for different assessment years, viz 1992-93, 1993-94 and 1994-95.

The first two issues relate to Section 80HH of the Income Tax Act and the question raised is as to whether third unit is to be ignored while computing the benefit to be given to the assessee in respect of the profits of the two industrial units which qualify for benefit under Section 80 HH of the Act. It is an admitted case that in the first round of litigation, which pertains to assessment year 1992-93, the Allahabad High Court had decided this issue in favour of the assessee. In view of this judgment of the Allahabad High Court confirming the order of CIT(A) as well as of the ITAT, the Assessing Officer was required to recompute the deduction under Section 80HH of the Act. It is the re-computation, which should be the subject matter of the dispute for the second round of litigation, wherein the assessee had succeeded before the ITAT. Against that order, these appeals are filed.

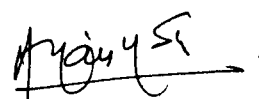


There, it is made clear that issue Nos. (a) and (b), as raised do not arise in these appeals and the dispute is about re-computation of the deduction under Section 80HH of the Act, but no such dispute is raised in these appeals.

Learned counsel for the appellant submits that this has happened by some default and she be allowed to modify/amend the question of law. Normally, we would have granted such a permission, but for the fact that not only the questions of law need to be amended, the basis for challenging the decision of the ITAT raising this question has also to be set-out in the body of the appeal.

For this reason, instead of allowing the appellant to amend or modify the question of law, we give liberty to the Revenue to file fresh appeal raising appropriate questions of law. In the fresh appeal to be filed, the Department shall be permitted to raise 3rd question, which is raised in these appeals.

Giving the aforesaid liberty, the present appeals along with all the pending applications, are disposed of.


A.K. SIKRI, J.


M.L. MEHTA, J.

FEBRUARY 01, 2011

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