$~14 to 17

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

Reserved on: 30th August, 2012

% *Date of Decision: 28th September, 2012*

\+ **ITA 1394/2009**

COMMISSIONER OF INCOME TAX .... Appellant

VERSUS

M/S. M.S. INTERNATIONAL LTD. .... Respondent

\+ **ITA 210/2007**

\+ **ITA 147/2007**

COMMISSIONER OF INCOME TAX .... Appellant

VERSUS

M.S. SHOES EAST LTD. .... Respondent

\+ **ITA 575/2007**

COMMISSIONER OF INCOME TAX .... Appellant

VERSUS

PEARL INTERCONTINENTAL LTD. .... Respondent

Present: Mr. Kamal Sawhney, Sr. Standing Counsel for Revenue in ITA Nos.999/2006, 210/2007, 575/2007 and 147/2007.

Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel with Ms. Gayatri Verma, Adv. in ITA No.1394/2009.

Mr. Pavan Sachdeva, respondent in person in all matters.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

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

R.V. EASWAR, J.:

For order see ITA No.999/2009.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 28, 2012
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$~13 to 17

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

Reserved on: 30th August, 2012
Date of Decision: 28th September, 2012

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\+ **ITA 999/2006**
\+ **ITA 1394/2009**

COMMISSIONER OF INCOME TAX .... Appellant

VERSUS

M/S. M.S. INTERNATIONAL LTD. .... Respondent

\+ **ITA 210/2007**
\+ **ITA 147/2007**

COMMISSIONER OF INCOME TAX .... Appellant

VERSUS

M.S. SHOES EAST LTD. .... Respondent

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VERSUS

PEARL INTERCONTINENTAL LTD. .... Respondent

Present: Mr. Kamal Sawhney, Sr. Standing Counsel for Revenue in ITA Nos.999/2006, 210/2007, 575/2007 and 147/2007.

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Mr. Pavan Sachdeva, respondent in person in all matters.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

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

R.V. EASWAR, J.:

Since all the appeals involve a common issued and were heard together, they are disposed of by a common judgment. The appeals have been filed by the CIT under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The ITA Nos.999/2006, 1394/2009, 210/2007 and 575/2007, though they relate to three different assessees, involve a common question, namely, whether the assessee was rightly held by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') to be entitled to the deduction under Section 80HHC of the Act. ITA No.147/2007 involves the question of penalty imposed on the assessee under Section 271(1)(c) of the Act and the question of law is whether the Tribunal was right in cancelling the penalty: This appeal is consequential to the fate of ITA No.210/2007.

2. The ITA No.999/2006 is taken as the lead matter. The appeal relates to the assessment year 1993-94. The respondent-assessee is a public limited company by name M.S. International Ltd., (hereinafter referred to as 'MSIL' or 'the assessee'). The brief facts giving rise to the appeal may be noted. The assessee was incorporated on 06.06.1991. Its business was to manufacture and export synthetic rubber sole sheets. In respect of the assessment year 1993-94, relevant to the previous year ended on 31.03.1993, which is practically first year of its operation, it filed a return of income on 30.12.1993 declaring a total income of ₹2,570/-. In the return, the assessee claimed deduction of ₹6,48,92,549/- under Section 80HHC. Included in this was a deduction of ₹6,05,43,627/- in respect of export of synthetic rubber sole sheets to M/s.

Taj Al Khaleej General Trading Company of Dubai (hereinafter referred to as 'Taj' of 'TAKGT'). It would appear that there was a search under Section 132 of the Act of the assessee group of companies on 29.06.1994 on the basis of information that the assessee is indulging in over pricing its exports and in order to honour the export commitment substandard goods were being purchased from the domestic market and exported; and in league with the importer, money taken out of India through *hawala* route was being brought in as export proceeds. It is not clear from the assessment order as to whether, and if so, what were the documents or materials seized during the search, but suffice to note that in the course of the assessment proceedings the assessing officer communicated with the Directorate of Revenue Intelligence (DRI) in response to which a letter dated 01.12.1995 was received. Along with the letter, a statement dated 28.12.1994 was also received by the assessing officer, which was that of one Sheikh Suad Bin Abdullah Rashid Al Nuaimi, President of the Economic Department, PO Box No.870, Ajmen, U.A.E. The letter is reproduced in the assessment order and therefore is not reproduced here. Suffice to note that the Sheikh stated that he was a partner of Taj and that he has never heard of MSIL from whom his firm was supposed to have imported synthetic rubber sole sheets, that he has never met or heard of Pavan Sachdeva, one of the Directors of MSIL and that the order said to have placed by Taj with MSIL by letter dated 18.01.1993 for 10 consignments of 53077 rubber sheets for a total cost of US $ 10,615,380 was not actually a letter written by Taj, that the letter did not contain any specifications which was quite unusual for an order of import, that he has seen a list of 155 shipping consignments sent by MSIL between 16.03.1993 and 11.03.1994 for a total FOB value of US $ 10,615,392, that he was not aware of any such shipping consignment imported by Taj into Dubai and that the name of Taj has been misused in the documents. On the basis of this letter, the assessing officer wrote to MSIL and sought its explanation. The assessee by letter dated 27.11.1995 submitted that the export orders received from Taj were submitted in original with the application for license submitted to the Directorate

General of Foreign Trade (DGFT), that the synthetic rubber sole sheets were in fact exported to Taj and the entire sale proceeds were realised through Bank of Baroda from the banker of Taj in Dubai.

3. The assessing officer was not satisfied with the assessee's reply. It would appear that the assessee had also submitted replies to the DRI vide its letters dated 23.08.1995 and 01.12.1995. The assessee also submitted a letter to the assessing officer on 04.03.1996 attaching a photocopy of another statement of the Sheikh in which the Sheikh had withdrawn his earlier statement dated 28.12.1994. The assessing officer was not prepared to accept the retraction of the Sheikh for the reasons that it was undated, that it was not sworn to before an Oath Commissioner, that the original was not available, that the statement was not collected through any government agency, etc. In its earlier letter dated 27.11.1995, the assessee had stated to the assessing officer that the Sheikh was upset with the assessee's refusal to give certain amount of discount and that was the reason for his giving a statement on 28.12.1994 denying the imports. All these submissions of the assessee were brushed aside by the assessing officer for the reasons stated above and also because he suspected that the second statement, retracting his earlier statement, was issued at the behest of the assessee. It would also appear that the Assessing Officer had conducted some inquiries through the enforcement directorate regarding the genuineness of Taj in Dubai and the letter issued by the Sheikh on 28.12.1994. According to the information received by letter dated 08.01.1996 from the Consulate General of India, Dubai the following was the position: -

i) M/s. Taj Al Khaleej General Trading Co. Dubai was not existing at the time of verification i.e. June 1994.

ii) However during the period namely Jan. 1993 a firm in the name of Taj Al Khaleej General Trading Co. was existing in Dubai.

iii) The Prop. of the firm was Sheikh Suad Bin Abdullah Rashid Al Nuaimi.

iv) When contacted Sh. Sheikh Suad Bin Abdullah Rashid Al Nuaimi confirmed the issuance of the letter dated 28.12.94.

v) Sheikh Nuaimi informed that the contents of the letter dated 28.12.94 are correct and that he issued the same as per the advice tendered by his legal consultant.

4. In the light of the aforesaid facts the assessing officer held that there were no exports made by the assessee to Taj and no deduction under Section 80HHC was allowable. He accordingly denied the deduction. However, the amount of ₹6,05,43,627/- was treated as income of the assessee under the head "income from other sources" since the money had actually been received by the assessee. Thus the total income of the assessee was computed at ₹6,05,46,197/- which consisted of the returned income of ₹2,570/- and the addition of ₹6,05,43,627/- as "income from other sources".

5. The assessee appealed to the CIT (Appeals) who heard both the assessee as well as assessing officer and passed an order on 19.03.1997. Before the CIT (Appeals) the assessee adduced additional evidence under Rule 46A of the Income Tax Rules, 1962 to show remittances received from Taj through banking channels, for purchase of raw material and manufacture of goods as also evidence to show that the goods were shipped to Dubai. The additional evidence was admitted by the CIT (Appeals) who eventually held that since the assessment was made on the basis of a single statement of the Sheikh who had retracted the statement and since the second statement of the Sheikh filed by MSIL was not tested by cross-examination, the case was required to be remanded to the assessing officer to be examined and framed afresh. He accordingly remitted the matter to the assessing officer.

6. In giving effect to the order of the CIT (Appeals), the assessing officer on 10.02.1999 granted an opportunity to MSIL to produce the Sheikh and also issued summons to him under Section 131. He had also sent letters to the Sheikh on 24.02.1997 and 25.03.1997 which remained unanswered by the Sheikh. The Sheikh also did not appear pursuant to the summons issued under Section 131 and, therefore, he could not be examined or cross-examined either by the assessing officer or by the assessee. On 05.03.1999 the assessee submitted the documents in its possession to show that the exports were genuine. The assessing officer, however, in the fresh order of assessment passed on 31.03.1999 under Section 143(3) read with Section 250 of the Act, again held that the exports to Taj were not bona fide, that the deduction under Section 80HHC was not allowable and that the export proceeds have to be considered as "income from other sources".

7. Against the fresh assessment order the assessee filed an appeal to the CIT (Appeals) who passed an order on 21.11.2001. In brief, he held that in view of the inquiries conducted, it was evident that the exports made by MSIL were not genuine and bonafide and, therefore, the assessing officer was justified in not allowing deduction under Section 80 HHC and in assessing the amount under the head "income from other sources".

8. The assessee, aggrieved by the above order of the CIT (Appeals), preferred a further appeal to the Tribunal which, on a consideration of the entire conspectus of the facts and the evidence, held as follows: -

(i) The income tax authorities had disallowed the assessee's claim only on the basis of the statement of the Sheikh made on 28.12.1994 and had ignored the documentary evidence adduced by the assessee showing export sale of ₹11.47 crores. The assessing officer had also held that the expenses on electricity and water amounted only to ₹57,981/- and wages amounted only to

₹14,400/- from which goods of the value of ₹11 to 12 crores cannot be manufactured. In coming to this conclusion, the assessing officer has ignored the evidence adduced by the assessee that it was getting the work done through job work undertaken by its sister concerns.

(ii) Since the assessee was getting the job done through sister concerns, the fact that it possessed machinery of only ₹2,72,249/- was irrelevant.

(iii) The assessee did not claim at any point that the entire goods were manufactured by it.

(iv) Neither the assessee nor the assessing officer could succeed in producing the Sheikh for further examination on his statements. However, the assessee has been able to lead sufficient documentary evidence to show that the exports were genuine. This included the following: -

> *"1. Original Bank Certificate from ANZ Grindlays Bank, Dubai, UAE showing bills received by the bank and drawn on M.S. Taj Al Khaleej General Trading Coy. By the assessee after being paid by the bank.*
>
> *2. Export orders confirmed by M.S. Taj Al Khaleej.*
>
> *3. Original statement showing credit limit for M.S. Taj Al Khaleej by "Export Credit Gaurantee Corporation of India" a Govt. of India Undertaking.*
>
> *4. Particulars of exports duly endorsed by Customs authorities in the "Duty Entitlement Exemption Certificate" (DEEC Book).*
>
> *5. Bank certificate for export realization.*
>
> *6. Exchange control declaration from RBI.*
>
> *7. Exchange control declaration from RBI.*
>
> *8. Attested Customs shipping bill certifying exports."*

(v) The assessee was also able to adduce the following further documents in support of its claim before the CIT (Appeals): -

> *"(1) Courier receipt of communication dispatched by TAKGT to ITO.*
>
> *(2) Application for VISA of Pawan Sachdeva.*
>
> *(3) A letter from TAKGT to the Consulate General, Indian Embassy, Dubai.*
>
> *(4) Letter from TAKGT to MS International Ltd., Delhi giving details of order placed by them.*
>
> *(5) Invoice No.92R-912 dated 17.9.92 of M/s Fuji Chemicals Development Do. (sic.) Ltd., Tokyo for import of 16.8 MT of Synthetic Rubber.*
>
> *(6) Bill of lading No.A6-65245A dated 28-9-92 issued by Evergreen Japan Corporation.*
>
> *(7) Bill of entry for Home consumption No.2431/92-93 dated 29.10.92.*
>
> *(8) Bill No.11402 dt. 9.11.92 of M/s. N.G. Bhanushali & Co. clearing agents regarding clearing of goods from Bombay Port.*
>
> *(9) Goods receipt (GR) copy No.5889 and 5891 dated 7.11.92 of M/s Haryana Golden Transport for dispatch of goods from Bombay to Delhi.*
>
> *(10) Transport bill No.HGT/DLH/392 dt. 16.11.92 and HGT/DLH/389 dt. 16.11.92 of M/s Haryana Golden Transport.*
>
> *(11) Octroi Receipts.*
>
> *(12) Invoice No.MI/10 dated 16.10.92 drawn in favour of M/s Vikhuda Overseas Corporation for export of 3800 Synthetic rubber Sheets., GR. No.AB 479852.*
>
> *(13) Bill of lading dated 23.12.92 issued by Mitsui O.S.K. Lines ltd. against invoice No.M 1/10.*

(14) Customs shipping Bill No.5974 dated 17.12.92.

(15) Invoice No.MI/68 dated 21.1.93 for export of 1400 Synthetic Rubber Sheets. GR No.AB 395116.

(16) Bill of lading No.APLU 004411973 dated 29.3.93 issued by American President Lines Ltd.

(17) Customs Shipping Bill No.9452 dated 22.1.93.

(18) Duty Exmption Entitlement Certificate Book. Issued and maintained by Deptt. of Revenue (Customs), Govt. of India Bearing Serial No.055526, containing particulars of DEEC, value of the imports Licence ₹7.20 crores (Advance Licence), Assessee's Commitment to export goods of that value, particulars of exports made."

(vi) In addition to the above the assessee also produced evidence to show that the remittances for the export sale were received from Dubai through banking channels which has been overlooked by the assessing officer.

(vii) The income tax authorities have ignored the fact that the assessee had exported similar goods to other foreign buyers which have not been doubted by them. Further, the Sheikh had stated that Taj was not only importing from MSIL but also from its sister concerns.

9. With regard to the statements of the Sheikh, the Tribunal found that in the first statement dated 28.12.1994, he had denied making any purchases from MSIL. This was sought to be explained by the assessee before the Tribunal on the ground that it was given at the behest of M/s. Gujarat Apar Polymer Ltd., a business rival which had complained to the Ministry of Commerce on the basis of which inquiries were initiated by the government and this had put pressure on the Sheikh who wanted to dissociate himself from the assessee. It was only when the difficulties were removed that the

Sheikh came forward to make a statement retracting his earlier statement. The Tribunal has noted the assessee's submission in para 11 of its order as follows: -

> *"11. According to the assessee, the statement dated 28.12.94 by the Sheikh denying the purchases from the assessee was made on the basis of a complaint lodged by the hostile business rival of the assessee company, namely M/s. Gujarat Apar Polymers ltd. with the Minister of Commerce and on the strength of that complaint enquiries were initiated by the Government and, therefore, under pressure the Sheikh made that statement to avoid serious trouble. However, when these complications were removed, the Sheikh agreed to make statement to bring out the true facts denying his previous statement stating the circumstances under which that statement was made and fully accepting the export sales made to him by the assessee company. Along with his statement an annexure was also appended detailing the documentary evidence to support the factum of imports made by the firm of the Sheikh from the assessee company. The assessee also claims that the copy of this statement was also directly faxed by the Sheikh to the AO and also enclosing the entire documentary evidence forwarded it by sending another copy through courier to the AO. The Sheikh also filed an affidavit, which has been authenticated by Ministry of Foreign Affairs Sharjah as well as by Dubai Chamber of Commerce and Industry. In this affidavit. Sheikh Rasheed has clearly admitted that all the orders sent by the assessee and its other companies were placed by TAKGT and that the assessee and is other group companies have not all misused the name of TAKGT company. In this very affidavit, the Sheikh further slated that all the orders were placed by the representative of his company, TAKGT, in Dubai and that he was aware of all the imports of every kind done by TAKGT from the assessee's group. Further, in the affidavit, the sheikh explained that the statement dated 28.12.94 was made by him on the deceit practiced by the representatives of M/s. Gujarat Apart Polymer Ltd. and its lawyer and that the statement does not have any authenticity at all. The Sheikh further admitted that the telephone number and the P.O. number given on the order form placed with M.S. group were being used by TAKGT. Further that no dues against any bills were to be paid and that all the payments have already been made from his accounts in A & Z Gribndlays Bank, Deira, Dubai. There was a coy of another declaration from Sheikh Rasheed which was dated and also authenticated by Dubai Chamber of Commerce and Industry, which repeats the same story to the effect that the orders*

placed with M.S. Group were genuine. It means that the Sheikh in his subsequent declaration and the affidavit, the genuineness of which has also been accepted and communicated to the Additional Director General Foreign Trade by the Consulate General of India in their letter dated 12.5.97 placed at, pages 58 & 59 of the paper book of the assessee, mentioned that the letter dated 28.12.94 was not registered, whereas, his subsequent affidavits were registered and in the affidavit dated 13.1.97 his signature have been legalized by Dubai Chamber of Commerce and Industry, which has also been enclosed by UAJ Ministry of foreign Affairs and as the affidavit dt. 13.1.97 has been legalized by Dubai Chamber of Commerce and Industry, which has also been enclosed by UAI Ministry of foreign Affairs and as the affidavit dt. 13.1.97 has been legalized it may have to be considered as authentic."

10. With reference to the aforesaid submissions of the assessee, the Tribunal opined as follows: -

"We are of the opinion that in case the AO was relying upon the statement of the Sheikh dated 28.12.94 the opportunity should also have been afforded to the assessee to cross examine the Sheikh and in the absence of same no reliance could also be placed on such statement. Further, the second statement made by the Sheikh, fully retracting from the earlier statement made by him also of course cannot be safely relied upon because the AO is deprived from the opportunity of cross examining the Sheikh as he did not choose to appear for this purpose. As regards the affidavit of the Sheikh in support of his retraction from the statement made earlier dated 28.12.94, admitting the export purchases made from the assessee and the payments being made through banking channels as claimed by the assessee, the Consulate General of India's office in the letter to additional Director of Foreign Trade has confirmed the genuineness of the affidavit of the Sheikh, on which the signature of the Sheikh were legalized the affidavit was registered by the Dubai Chamber of Commerce & Industry and has also been endorsed by the UAE Ministry of Foreign Affairs. In these facts it may not be safe to rely upon the unauthenticated statement made by the Sheikh, but, at the same time is would also not be fair on the part of tax authorities re the affidavit, for contradicting which neither is been made nor any evidence has been brought the department. Fact remains that when

the assessee from the documentary evidence is able to prove the export sales made by it to the Sheikh's company TAKGT, Dubai, and having received the amount of ₹6,05,43,627/- as remittance for the same, through banking channel of Dubai in the Indian Bank the export sales made by the assessee cannot be disbelieved on the solitary statement of the Sheikh made earlier on 28.12.94, when the same was subsequently retracted by the Sheikh himself in a duly authenticated affidavit."

11. After examining the documentary evidence placed by the assessee the Tribunal held that there was no basis to disbelieve the entire documentary evidence merely because of the statement of the Sheikh made on 28.12.1994. The Tribunal finally held that the tax authorities were not justified in treating the export sale made by the assessee to Taj, Dubai as non-genuine and in refusing the deduction claimed under Section 80HHC. The Tribunal also deleted the addition of the amount of ₹6,05,43,627/- as "income from other sources".

12. Similar orders were passed in the case of MSIL for the assessment year 1994-95. In the case of M.S. Shoes East Ltd. and the case of Pearl Intercontinental Ltd. also the Tribunal took the same view. It may be noted that in these cases also the assessees had claimed the deduction under Section 80HHC in respect of the exports made to Taj which were disbelieved. The export proceeds were assessed as "income from other sources". In the case of M.S. Shoes East Ltd., the assessing officer also imposed a penalty of ₹59,58,588/- under Section 271(1)(c) of the Act for concealment of income. The penalty was cancelled by the Tribunal since it had deleted the addition made under the head "income from other sources" and also allowed the assessee's claim for deduction under Section 80HHC.

13. The contention of the standing counsel for the Revenue is that the finding of the Tribunal in all the cases is perverse as it has overlooked the first statement of the Sheikh made on 28.12.1994 and has given undue weightage to the retraction and to the

affidavit dated 13.01.1997 which was filed by the assessee in the course of the fresh assessment proceedings. The contention of the assessee, who appeared through its Managing Director, is that the Tribunal has taken the decision on the basis of the evidence adduced before the income tax authorities including copious documentary evidence and has not chosen to go only by the first statement made by the Sheikh. He further pointed out that the Tribunal has referred to all the three statements of the Sheikh and has held, on a proper appreciation of them, that the retraction and the affidavit dated 13.01.1997 contained the truth and should be believed. It is contended that there is nothing brought on record to show that the findings of the Tribunal are perverse, nor was there any inherent improbability in the evidence adduced by the assessee in order that the conclusion of the Tribunal may be criticized as irrational.

14. On a fair reading of the order of the Tribunal, we are unable to say that its appreciation of the evidence is contrary to law. We have already adverted to the documentary evidence which was placed before the income tax authorities in both the rounds of the proceedings as also before the Tribunal. The Tribunal has taken note of every item of evidence, including the three statements of the Sheikh. It has preferred to rest its decision on the overwhelming documentary evidence adduced by the assessee to prove the exports which included correspondence with the governmental authorities, their approvals, etc. None of the documentary evidence has been impeached or sought to be discredited on behalf of the Revenue. The Tribunal has also taken due notice of the statements of the Sheikh and has preferred to accept the retraction, supported later by the affidavit dated 13.01.1997 sworn to by him before the Indian Consulate at Dubai. No material has been brought on record or in the course of the proceedings before the Tribunal to throw any doubt on the credibility of the affidavit sworn to before the Indian Consulate in Dubai. The Sheikh was neither produced by the assessing officer nor by the assessee and he was not subjected to any examination or cross-examination by the income tax authorities. It is in these

circumstances that the Tribunal has chosen to accept the retraction of the Sheikh, supported by the affidavit. Added to this is the fact that there was copious documentary evidence in support of the exports. The decision taken by the Tribunal is not, in our opinion, vulnerable to the charge that it has been arrived at by ignoring relevant material or evidence or by taking into account irrelevant evidence or material. The findings of the Tribunal are essentially findings of fact and they cannot be subjected to the criticism of being unreasonable or perverse or irrational. It has been held by the Supreme Court in *Sree Meenakshi Mills Ltd. v. CIT*, (1957) 31 ITR 28 as follows: -

> "*.....It has been held on the corresponding provisions in the English Income-tax statutes that a finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence, or if it is unreasonable and perverse, but that where there is evidence to consider, the decision of the Tribunal is final even though the Court might not, on the materials, have come to the same conclusion if it had the power to substitute its own judgment. In Great Western Railway Co. v. Bater(1), Lord Atkinson observed: -*
>
> > "*Their (Commissioners') determinations of questions of pure fact are not to be disturbed, any more than are the findings of a jury, unless it should appear that there was no evidence before them upon which they, as reasonable men, could come to the conclusion to which they have come: and this, even though the Court of Review would on the evidence have come to a conclusion entirely different from theirs.*"

To the same effect are the observations of the Supreme court in *CIT v. Daulat Ram Rawatmull*, (1973) 87 ITR 349: -

> "*.....Before dealing with the facts of this case, we may advert to the principles which should govern the decisions of the court in such like cases. Findings on questions of pure fact arrived at by the Tribunal are not to be disturbed by the High Court on a reference unless it*

appears that there was no evidence before the Tribunal upon which they, as a reasonable men, could come to the conclusion to which they have come; and this is so, even though the High Court would on the evidence have come to a conclusion entirely different from that of the Tribunal. In other words such a finding can be reviewed only on the ground that there is no evidence to support it or that it is perverse....."

14. We are, therefore, satisfied that the Tribunal committed no error in holding that the assessees were entitled to the deduction under Section 80HHC of the Act in respect of the export of goods to Taj and that the assessing officer was not justified in assessing the export proceeds not as business income but as "income from other sources". The substantial questions of law in ITA No.999/2006, 1394/2009, 210/2006 and 575/2007 are answered in the affirmative, in favour of the assessee and against the Revenue. The Tribunal was also right in cancelling the penalty imposed on the assessee M/s. M. S. Shoes East Ltd. (ITA No.147/2006). All the substantial questions of law are thus answered in favour of the assessee. The appeals of the Revenue are accordingly dismissed with no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 28, 2012
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