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

Reserved on: July 28, 2017
Decided on: August 18, 2017

\+ **ITA 206/2005**

COMMISSIONER OF INCOME TAX
DELHI-IX, NEW DELHI .....Appellant
Through: Mr. Zoheb Hossain, Senior Standing Counsel with Mr. Deepak Anand, Standing Counsel.

versus

M/S ARYA EXPORTS & INDUSTRIES ..... Respondent
Through: Mr. Ajay Vohra, Senior Advocate with Mr. Aniket D. Agrawal and Mr. Rohit Jain, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

J U D G M E N T

% 18.08.2017

Dr. S. Muralidhar, J.:

1. This is an appeal under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue against the order dated 29th July, 2004 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4148/Del/1999 for the Assessment Year ('AY') 1996-97.

2. By the order dated 22nd January, 2007, this Court framed the following question of law for consideration:

Whether the ITAT was correct in law in holding that the Assessee was entitled to deduction under Section 80 HHC of the Act?

Background facts

3. The facts leading to the filing of the present appeal are that the Respondent/Assessee filed its return of income for the AY in question declaring an income of Rs. 1,800 on 18th October, 1996. Along with the return the Assessee filed the balance sheet, manufacturing trading and Profit & Loss ('P&L') Account, the Auditor's Report under Section 80 HHC (4A) and the certificate in Form No. 10 CCAB. The total sales during the year was to the tune of Rs. 2,74,05,000. The sales had been made to Ratan Exports & Industries Limited ('REIL'), which had further exported the goods received from the Assessee to foreign buyers for Rs. 3,36,69,344.

4. REIL, which was an Export Trading House ('ETH'), had issued to the Assessee a certificate in Form 10 CCAB confirming that no deduction under Section 80HHC (1) had been claimed by REIL in respect of the aforementioned export turnover of Rs. 3,36,69,344. The said certificate, which had been duly verified by the Managing Director of REIL on 29th August 1996, was enclosed with particulars relating to supporting manufacturers and particulars relating to Export House. These included the invoice number, date of invoice, shipping bill number, nature of the goods with quantities, etc.

5. In terms of the P&L Account filed by the Assessee its cost of manufacturing was Rs.1,07,21,711 and the total sales was Rs. 2,76,43,175. The Assessee, accordingly, declared a net profit of Rs.1,66,85,289 and in the

computation of income filed with the return, the Assessee added Rs. 1,060 to the net profit. The total income, thus, declared by the Assessee was Rs. 1,66,86,349 and the net income, after deducting Rs. 1,66,84,549 under Section 80 HHC, was shown as Rs. 1,800, being 90% of the interest income which amounted to Rs. 2,000. In other words, the Assessee claimed 100% deduction under Section 80 HHC on the net profit shown in the P&L Account.

The assessment order

6. In a written reply by way of a letter dated 19th February 1999, addressed to the Assessing Officer ('AO'), the Assessee explained that it had entered into an agreement with REIL on 11th February, 1995 for supply of 783 Metric Tonnes ('MT') of detergent. The Agreement was made on the understanding that REIL, which at that time had a trading house certificate ('THC') valid up to 31st March, 1995, would issue a disclaimer with regard to the deduction under Section 80HHC of the Act in favour of the Assessee. The Assessee further stated that it had dispatched 314.08 MT of detergent to REIL prior to 31st March, 1995. The balance quantity of the detergent i.e. 468.928 MT was supplied by it on various dates between 1st April, 1995 and 5th June, 1995. REIL, in turn, carried out the export of the said detergent on various dates starting 12th May, 1995. REIL issued the disclaimer certificate on 29th August, 1996.

7. The Assessee pointed out that under the Export Import Policy (Exim Policy) of the Government of India, the THC was valid for three years and upon expiry of which, the ETH was allowed a further period of six months

to apply and to obtain a fresh certificate. During this period, the ETH would be eligible to claim all the "usual facilities and benefits except the benefit of a Special Import Licence." The Assessee explained to the AO that the ETH had in the instant case filed an application for renewal of its THC by a receipt dated 16th October, 1995 issued by the Chief Controller of Imports & Exports ('CCI&E'). This application was followed up by the ETH, by a fax message dated 8th December 1995, with the CCI&E [subsequently re-designated as the Director General of Foreign Trade ('DGFT')]. On 17th January, 1996, the DGFT wrote a letter stating that the case of REIL was under active consideration. Thereafter, the ETH in question, i.e., REIL did not receive any communication from the DGFT to indicate that its application for renewal of the THC was rejected.

8. The Assessee pointed out that in issuing a value based advance licence to REIL on 14th June 1995 for imports for Rs. 1,17,28,987 (USD 3,66,531) against the export of the Assessee's goods, REIL was treated by the CCI&E as an ETH. It was accordingly, contended that with REIL having made exports as an ETH between 1st April, 1995 and 5th June, 1995 (i.e. during the further six month period), the Assessee was entitled to deduction under Section 80 HHC (1A) of the Act.

9. The AO in the assessment order dated 26th March, 1999 noted that against a profit of Rs. 1,66,86,349 shown by the Assessee, the profit earned by REIL worked out to Rs. 62,64,344. The AO further noted that in terms of Section 80 HHC of the Act it was obligatory on the part of the ETH (i.e. REIL) to obtain a certificate from the concerned Government authorities.

The application for renewal of THC, which had to be made within six months from the date of expiry of the earlier THC. It was, however, filed on 16th October, 1995, i.e., beyond the period of six months. Accordingly, the AO held that the REIL had not fulfilled the conditions for filing the application for renewal. Further, the certificate of renewal had not been shown to have been received. The AO accordingly held as under:

> "The period of nearly 4 years is sufficiently long time to pursue the application and obtain the renewal certificate. Since the renewal certificate has not been received by the Trading House, the export done after 1.4.95 is not entitled to deduction under Section 80HHC. The export has been done by the M/s Ratan Export & Industries Ltd. and they were entitled to claim deduction U/s 80HHC but here the deduction is being claimed not by the exporter but by the supporting manufacturer and for this the issue of renewal certificate is an essential condition. Without renewal certificate, the claim of deduction under Section 80HHC by the supporting manufacturer is not valid and therefore, the deduction claimed by the Assessee's firm of Rs. 1,66,84,549 U/s 80HHC stands rejected and the not total income is determined at Rs. 1,66,86,349."

Order of the CIT (A)

10. Aggrieved by the above assessment order, the Assessee went in appeal before the Commissioner of Income Tax (Appeals) [‘CIT (A)’]. The CIT (A) in the order dated 4th August, 1999, noted the following undisputed facts:

(a) The Assessee had entered into an agreement with REIL in January, 1995 when the party was holding a THC.

(b) Pursuant to the said agreement the Assessee had supplied 314 MT of detergent to REIL before 31st March 1995, out of which shipping bills for

export of 128 MT had been made on 31st March 1995. Thus the entire quantity of goods were supplied by the Assessee to REIL and exported by the said party by June, 1995.

(c) REIL had received the remittance for the export proceeds in convertible foreign exchange within the stipulated time period.

(d) REIL had issued disclaimer in Form 10 CCAB in favour of the Assessee and had not claimed any export benefit in respect of the export of goods purchased from the Assessee.

(e) REIL had filed an application for renewal of the THC which was pending as of date.

(f) REIL had received advance licence against the export of goods purchased from the Assessee.

(g) The Assessee had complied with formalities relating to excise duty in respect of the detergent supplied to REIL and exported by REIL.

11. The CIT (A) held that the benefit of deduction under Section 80 HHC of the Act was being denied to the Assessee on mere technicalities that the ETH in question was not holding a valid THC, although, the admitted fact was that the application for renewal was pending for about four years before the relevant authorities. When the AO had been asked to produce further evidence regarding the inquiry conducted by the DGFT, he expressed his inability to do so. The CIT (A) observed that it was nobody's case that the goods supplied by the Assessee had not been exported by REIL or that REIL

had not received remittances in foreign exchange against the export of such goods. The documents placed on record also clearly established that the goods supplied by the Assessee were, in turn, exported by the REIL.

12. Accordingly, the CIT (A) while allowing the Assessee's appeal, held as under:

> "Considering the legislative intent and the spirit of the section an keeping in view the fact that there is no loss to the revenue, since deduction under Section 80HHC of the Act was in any case admissible, whether to one or to other, I am inclined to agree with the submission made by the assessee and hold the assessee entitled to the bebnefit of deduction u/s 80HHC of the Act in the peculiar circumstances of the case."

Impugned order of the ITAT

13. The Revenue then went in appeal before the ITAT which, by the impugned order, upheld the order of the CIT(A). It was noted that the disclaimer certificate was issued at a time when the ETH did not have the requisite renewal and yet, it was open to deduce that there was no denial of the renewal either, at the relevant point of time. Consequently, it was held by the ITAT that "merely on technicalities, the plea of the Assessee could not have been shut out."

14. It was further noted by the ITAT that if the contention of the Revenue were to be upheld, it would amount to denying both the ETH as well as the Assessee, the deduction under Section 80 HHC of the Act since, in view of the disclaimer certificate, the ETH would obviously not be eligible to claim the deduction whereas the Assessee was being denied the deduction. On this ground alone the ITAT thought it fit to concur with the decision of the CIT

(A).

15. The case of the Revenue is that inasmuch as REIL did not have a valid THC on the date it issued the certificate to the Assessee in Form 10 CCAB, the Assessee cannot get the benefit under Section 80 HHC (1) read with (1A) of the Act. In other words, if REIL could not in the first place have got a deduction, the Assessee as a supporting manufacturer *afortiori* cannot. The main plank of the case of the Revenue is the decision of the Supreme Court in ***IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax, Mumbai (2004) 12 SCC 742*** and, in particular, the observations recorded in para 15 therein.

Analysis of Section 80 HHC

16. Before discussing the said decision it is important to refer to Sections 80 HHC (1) and 80 HHC (1A) of the Act, which read as under:

> "Deduction in respect of profits retained for export business.
>
> 80 HHC (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise:
>
> Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting

manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

(1A) Where the assessee, being a supporting manufacturer, has during the previous year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub-section (1), there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B), derived by the assessee from the sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House."

17. Section 80 HHC is titled "Deduction in respect of profits retained for export business." There are two kinds of Assessees envisaged in the above provisions. One is an Assessee which is an Indian company or a person resident in India engaged in the business of export out of India of certain goods or merchandise. Such an Assessee is covered by sub-section (1) of Section 80 HHC of the Act. The proviso thereto states that if such an Assessee is the holder of a THC and also issues a certificate referred to in clause (b) of sub-section (4A) of Section 80 HHC then, in respect of the amount of the export turnover specified therein, the deduction under sub-section (1) of Section 80 HHC of the Act is to be allowed to a 'supporting manufacturer'. In such event, the Assessee gets a reduced deduction as specified in the proviso to Section 80HHC(1) and this reduction is in the same proportion as the export turnover (specified in the said certificate bearing the total export turnover). Therefore, both Section 80 HHC (1) and

the proviso thereto are specific to the Assessee, who is an exporter and the holder of a THC.

18. The second type of an Assessee envisaged is the supporting manufacturer to whom sub-section (1A) of Section 80 HHC applies. Sub-section (1A) states that where such a supporting manufacturer has sold goods or merchandise to any export/trading house in respect of which the export/trading house has issued a certificate under the proviso to sub-section (1), then, a deduction is to be allowed in computing the total income of the Assessee, i.e., the supporting manufacturer, to the extent of the profits derived by such supporting manufacturer from the sale of goods or merchandise to the export/trading house in respect of which the certificate has been issued by the export/trading house. Therefore, sub-section (1A) is entirely about the deduction to be allowed to the supporting manufacturer.

19. The legislative intent appears to be to treat the deductions to the aforementioned two types of Assessees, viz., the exporter and the supporting manufacturer, in mutually exclusive compartments. The legislative scheme regarding deduction allowable to an exporter is governed by Section 80 HHC (1) (read with the proviso thereto), Section 80 HHC(1B) (to the extent that the said sub-section applies) and Section 80 HHC (2), (3), (4) and (4C), whereas, the legislative scheme pertaining to the deduction allowable to the supporting manufacturer is contained in Section 80 HHC (1A), (1B) (to the extent it applies), (3A), (4A) & (4B), Section 80 HHC (4C) applies to both the exporter as well as the supporting manufacturer. Therefore, the legislative intent is not to conflate the deduction that is allowable to an

exporter with that allowable to a supporting manufacturer.

***The decision in* IPCA Laboratory Ltd.**

20. In the present case, we are concerned with a deduction allowable to a supporting manufacturer (the Assessee herein) and not to an exporter (which in the present case would be REIL). It is pertinent to keep this in view while discussing the decision in ***IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax, Mumbai*** (*supra*).

21.1 In the above decision, the Assessee IPCA Laboratory Ltd. (IPCA) was itself the exporter as is plain from the facts narrated in the decision. IPCA was the holder of the export house certificate (EHC) issued by CCI&E. IPCA exported self-manufactured goods as well as goods manufactured by supporting manufacturers, i.e., trading goods. IPCA had earned profit of Rs. 3.78 crore from the export of self-manufactured goods. However, it reported a loss of Rs.6.86 crore from the export of trading goods. IPCA had issued certificate of disclaimer in favour of the supporting manufacturers in respect of the entire export of the trading goods.

21.2 In its return for AY 1996-97, IPCA claimed a deduction under Section 80 HHC of the Act with regard to the sum of Rs. 3.78 crores which was earned as profit from the export of self-manufactured goods. The AO, however, disallowed the said deduction after noting that there was a net loss from the export of goods.

21.3 IPCA's claim stemmed from Section 80 HHC (3) (c) and in particular the conjunctive word ‘and’ used between sub-clauses (i) and (ii) thereunder.

IPCA's contention was that the word 'profit' occurring therein had to mean ‘positive profit’ and would not include losses. If there were losses they had to be ignored because Section 80 HHC was enacted to give an incentive for earning foreign exchange. It had to, therefore, be given an interpretation which would further that object. In other words, it was contended that where the Assessee exported his own goods and also exported goods manufactured by supporting manufacturers the profits from the two types of exports were to be considered separately. The profit in respect of one could not be set off against the loss of the other.

21.4 The above contention was negatived by the Supreme Court by discussing the above provisions, i.e., Section 80 HHC (1) read with Section 80 HHC (3) of the Act. It was held that in calculating profits under Section 80 HHC (3) (c) (i) of the Act “one necessarily has to reduce by profits under Section 80 HHC (3) (c) (ii).” It was observed:

> “15. Another reason why the argument of Mr. Dastur cannot be accepted is that even under Section 80 HHC (3)(c)(i) the profit is to be adjusted profit of business. The adjusted profit of the business means a profit as reduced by the profit derived from business of exports out of India of trading goods. Thus in calculating the profits, under Section 3(c)(i), one necessarily has to reduce by profits under 3(c)(ii). As seen above the term "profit" means positive profit. Thus if there is loss then those losses in export of trading goods have to be adjusted. They cannot be ignored. We, therefore, hold that a plain reading of Section 80 HHC makes it clear that in arriving at profits earned from export of both self manufactured goods and trading goods, the profits and losses in both the trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction under Section 80 HHC(i). If there is a loss he will not be entitled to any deduction.”

22. It is on the strength of the above observations that it is contended by Mr. Zoheb Hossain, learned Senior Standing Counsel for the Revenue that in the present case where the exporter himself is unable to avail of a deduction under Section 80 HHC, as it had no profits during the AY in question, the Assessee being a supporting manufacturer could not claim such a deduction either. In other words, the contention of the Revenue is that unless the exporter is eligible to claim a deduction under Section 80HHC, the supporting manufacturer cannot, on the strength of a certificate issued by the trading house as referred in clause (b) of sub-section (4A) of Section 80HHC, claim such a deduction.

23. The Court is unable to agree with the above submission of the learned counsel for the Revenue. There is a discernible distinction, as discussed in the preceding paragraphs, in the legislative scheme of Section 80 HHC between, the deduction that can be claimed by an exporter and the deduction that can be claimed by a supporting manufacturer. It appears to this Court that while the supporting manufacturer certainly has to fulfil the condition of a certificate having been issued by the exporter/export trading house to avail the benefit of a deduction from the turnover that has been made available to the supporting manufacturer, expressly in terms of Section 80 HHC (1A) of the Act, the said deduction does not hinge upon the eligibility of the exporter for the deduction under sub-section (1) of Section 80 HHC of the Act.

24. The decision in ***IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax, Mumbai*** (*supra*) did not consider the situation of a supporting manufacturer claiming deduction in terms of Section 80 HHC (1A) of the

Act. Since, in the facts of that case the Assessee was the exporter itself and not a supporting manufacturer, the Court was not concerned with the interpretation of Section 80 HHC (1A) and the corresponding provisions, i.e., sub-sections (2A), (3A). Therefore, the observations extracted hereinbefore from the decision in ***IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax, Mumbai*** (*supra*) cannot apply to the facts of the present case.

25. Great emphasis was laid by Mr. Hossain on the observations in para 17 of the judgement in ***IPCA Laboratory Ltd. v. Deputy Commissioner of Income Tax, Mumbai*** (*supra*) which read as under:

> "17. It was next submitted that even when the profits are to be reduced by the losses in cases where an export house has disclaimed its turnover in favour of a supporting manufacturer, the turnover of the exporter gets reduced to the extent disclaimed. It is submitted that as the turnover, which is disclaimed, is reduced it cannot then be taken into consideration for the purposes of computing profits under sub-section 3(c)(ii). In our view this is an argument which merely needs to be stated to be rejected. If such an argument is accepted it would lead to an absurd result. It would mean when if there was no disclaimer the export house would not be entitled to any deduction in cases where there is a loss but because disclaimer has been made both the export house and the supporting manufacturer would become entitled to deductions. The proviso to sub-section (i) of Section 80HHC enables a disclaimer only to enable the export house to pass on deductions. It in no way reduces the turnover of the export house. In computing total income, the entire turnover is taken into account even though there is a disclaimer. Thus even though the disclaimer is made the taxable income of Rs.4.39 crores has been arrived at by the Appellants after taking into account the entire turnover from export of trading goods. In arriving at the figure of Rs.4.39 crores admittedly the loss of Rs.6.86 crores has been taken into account. Even after disclaimer the turnover has remained the turnover of the Export

> House i.e. the Appellants. The disclaimer is only for purposes of enabling the export house to pass on the deduction which it would have got to the supporting manufacturer. It follows that if no deduction is available, because there is a loss, then the export house cannot pass on or give credit of such non-existing deduction to a supporting manufacturer."

26. The above observations have to be understood in the context of that case. The Court there was concerned only with the deduction that is available to the exporter and not the deduction that is available to the supporting manufacturer. The crucial observation is to the effect that the proviso to sub-section (1) of Section 80 HHC "enables a disclaimer only to enable the export house to pass on deductions. It in no way reduces the turnover of the export house. In computing total income, the entire turnover is taken into account even though there is a disclaimer." All of the above observations were only in the context of an Assessee which was claiming the deduction as an exporter. It was not in the context of an Assessee which was a supporting manufacturer.

27. As noted above, the legislative scheme which emanates from sub-section (1A) of Section 80 HHC is to treat the supporting manufacturer and its entitlement to deduction separately from that of the exporter. The word 'Assessee' used throughout sub-section (1) refers only to the exporter whereas the same word used throughout sub-section (1A) refers to the supporting manufacturer. This distinction, as already noted, is maintained throughout, and particularly in sub-sections (3A) and (4A), of Section 80 HHC, which read thus:

> "(3A) For the purposes of sub-section (1A), profits derived by a supporting manufacturer from the sale of goods or merchandise shall

be,—

(a) in a case where the business carried on by the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the profits of the business;

(b) in a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount which bears to the profits of the business the same proportion as the turnover in respect of sale to the respective Export House or Trading House bears to the total turnover of the business carried on by the assessee."

....

"(4A) The deduction under sub-section (1A) shall not be admissible unless the supporting manufacturer furnishes in the prescribed form along with his return of income,—

(a) the report of an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed on the basis of the profits of the supporting manufacturer in respect of his sale of goods or merchandise to the Export House or Trading House; and

(b) a certificate from the Export House or Trading House containing such particulars as may be prescribed and verified in the manner prescribed that in respect of the export turnover mentioned in the certificate, the Export House or Trading House has not claimed the deduction under this section:

Provided that the certificate specified in clause (b) shall be duly certified by the auditor auditing the accounts of the Export House or Trading House under the provisions of this Act or under any other law."

28. Further, a perusal of Form 10 CCAB clearly shows that there is a separate certificate to be issued in favour of the supporting manufacturer

where the exporter makes a declaration that it has not claimed a deduction under Section 80 HHC (1). There is a counter verification by the Chartered Accountant of such a certificate. It is, therefore, clear that there is no double deduction claimed in respect of the export and this is consistent with the legislative intent of extending the benefit under Section 80HHC either to the exporter or to the supporting manufacturer and not to both. Even after the period for which the renewal of the THC was sought, REIL continued to be treated as an export house and that is plain from the facts that have emerged before the CIT(A) as well as the ITAT.

29. For the aforementioned reasons, the Court is unable to accept the contention of the Revenue in the present case that if the exporter, i.e., REIL, is not entitled to a deduction under Section 80 HHC for the AY in question then, automatically, even the supporting manufacturer, i.e., the Assessee herein, would not be entitled to a deduction under Section 80 HHC as well.

Entitlement of Supporting Manufacturer to deduction

30. On the question of REIL not having a valid THC and, therefore, not being in a position, at the relevant time, to issue any certificate to the Assessee in terms of the proviso to Section 80 HHC(1) of the Act, the Court concurs with the ITAT that REIL did file an application for renewal of its THC, which was pending before the relevant authorities for four long years and was pending even on the date of the assessment order. Therefore, the extant Exim Policy for the relevant period, which expressly states that during the interim period the trading house would be eligible to claim all the facilities and benefits, would come to rescue of the Exporter/REIL and,

therefore, to the further benefit of the supporting manufacturer/Assessee as well. The benefit under Section 80 HHC was, therefore, available to REIL for the exports made during this period. However, REIL having issued the disclaimer, did not, in fact, claim the deduction. The mere non-grant of the renewal of the THC by the DGFT cannot deprive the Assessee as a supporting manufacturer for the deduction it is entitled to in terms of Section 80 HHC (1A) of the Act.

31. There are a number of decisions in support of the contention of the Assessee that when no response is received to an application seeking renewal within a reasonable time, after the filing of such application it should be deemed to have been allowed. Illustratively reference may be made to the decisions in ***Lachman Chaturbhuj Java v. R.G. Nitsure (1981) 132 ITR 631 (Bom.); Harmanjit Trust v. Commissioner of Income Tax, Patiala-I (1984) 148 ITR 214; Commissioner of Income Tax v. Bishwanath Khirwal (1986) 161 ITR 382*** and ***Commissioner of Income Tax v. Surinder Kumar Parmod Kumar (1992) 193 ITR 71***. The decision in ***Shrikar Hotels Pvt. Ltd. v. Commissioner of Income Tax (2017) 394 ITR 657 (All.)*** also supports the proposition that the powers with the holders of public office have to be exercised within a reasonable time.

Conclusion

32. For all of the aforementioned reasons, the question framed by this Court by its order dated 22nd January, 2007 is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue. It is held that the Assessee was entitled to deduction under Section 80 HHC (1A) of the Act for the AY

in question.

33. The appeal is, accordingly, dismissed but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 18, 2017
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