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

\+ **INCOME TAX APPEAL NO. 16/2004**

Reserved on: 14th March, 2012

% **Date of Decision:** 17th April, 2012

COMMISSIONER OF INCOME TAX ...Appellant
Through Mr. Anupam Tripathi, Sr. Standing Counsel.

VERSUS

M/S GOEL JEWELLERS .....Respondent
Through Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N. Jha & Ms. Manasvini Bajpai, Advocates.

INCOME TAX APPEAL NO. 1070/2005

COMMISSIONER OF INCOME TAX ...Appellant
Through Mr. Sanjeev Rajpal, Sr. Standing Counsel.

VERSUS

M/S GOEL JEWELLERS .....Respondent
Through Mr. O.S. Bajpai, Sr. Advocate with Mr. V.N. Jha & Ms. Manasvini Bajpai, Advocates.

INCOME TAX APPEAL NO. 24/2006

M/S GOEL JEWELLERS ...Appellant

Through Mr. O.S. Bajpai, S
Advocate with Mr. V.N. Jha & Ms. Manasvini Bajpai, Advocates.

VERSUS

COMMISSIONER OF INCOME TAX .....Respondent
Through Mr. Sanjeev Rajpal, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.:

These three appeals under Section 260A of the Income Tax Act, 1961 (Act, for short) relate to the assessment year 1997-98. ITA No. 16/2004 preferred by the Revenue is directed against the order of the Income Tax Appellate Tribunal (tribunal, for short) dated 13th May, 2003. ITA No. 1070/2005 and ITA No. 24/2006 are two cross-appeals by the Revenue and the assessee, respectively against the order of the tribunal dated 29th March, 2005.

2. The facts as noted and recorded by the tribunal in the two orders are required to be first elucidated.

3. The assessee is a partnership firm engaged in business of manufacture and sale of jewellery/ornaments in India and abroad.

4. Survey under Section 133A of the Act was conducted in the business premises of the assessee on 5th December, 1996. Excess cash of Rs. 13,83,000/- was found and discrepancies in stock of gold ornaments and diamonds of Rs. 57,16,600/- were noticed. Statement of Hemant Goel, partner of the assessee, was recorded. The relevant portion of the statement reads:-

> "Q. Physical verification of stock during the course of survey as per inventories drawn & stock entered as per books of a/c. the following differences in stock in two forms have been found.
> M/s Goel Jewellers
> (i) Goel ornaments 777.079 gms (short)
> (ii) Diamond 58.73 ct. (excess)
>
> M/s Jewel Mines Corporation
> (i) Gold ornaments 191.861 gms (short)"
>
> Please explain the discrepancies?
>
> Ans. The excess diamond lying in the stock of M/s Goel Jewellers is surrendered to buy peace with the department. The valuation of the said stock is agreed to be taken at Rs. 6800 per ct. which comes to Rs. 399364/-
>
> As regards shortage in the gold ornaments is concerned in both the firms the same is lying with Karigars for manufacturing.
>
> Q. Is there any other stock of bullion lying with your karigars for manufacturing. If so please quantify and explain?
>
> Ans. Total stock lying outside is 12288.94 gms with Karigar. Out of which 191.861 gms belongs to Jewel Mines Corpn. & 777.7 belongs to M/s

Goel Jewellers where you have found this stock. However, stock of 11320.00 gms. 24 ct. bullion lying with the Karigars is surrendered to buy peace with the department. The value of the same is Rs. 57,16,600/- at the rate of Rs. 5050/- per 10 gms, the prevailing market rate.

The above surrender which is rounded off to Rs. 75.00 lakhs is made under the head business income to buy peace with the department on the explicit understanding that penalty proceedings under any of the provisions of the I.T. Act would not be initiated consequent to this surrender.

I am ready to pay the taxes becoming due on the surrendered amount. The two cheques drawn on the State Bank of India, Overseas Branch, Parliament Street, New Delhi for Rs. 18,00,00/- dtd. 15.12.96 & Rs, 12,00,000/- dtd. 15.03.97 respectively. Kindly acknowledge."

5. Subsequently, the assessee filed their return of income on 28th October, 1997 declaring income of Rs. 18,02,100/- . In this return, the assessee had claimed deduction under Section 80HHC of the Act. While computing the said deduction, the assessee had taken the surrendered income of Rs. 75 lacs as business profits. The total business turnover was taken as Rs. 3,24,92,658/- and export turnover was taken as Rs. 2,67,83,345/-. The total profit from business was Rs. 1,02,56,082/- and accordingly deduction under sub-section 3 to Section 80HHC was computed as Rs. 84,53,978/-.

6. The Assessing Officer held that Rs.75 lacs was not part the business profit and cannot be taken into account for computing deduction under Section 80HHC, but he further held that the same was not related with foreign exchange received by the assessee from exports. The Assessing Officer excluded this amount of Rs.75 lacs from business profit of Rs.1,02,56,082/-. The figure of total turnover of business and export turnover was not disturbed by him and the deduction under the said provision was computed as Rs.22,71,800/-, instead of Rs.84,53,978/- as claimed by the assessee.

7. The CIT (Appeals) confirmed the said computation, inter alia, observing that addition of Rs.75 lacs under Sections 68 and 69A of the Act has to be assessed under the head “income from other sources” and, therefore, cannot be taken into consideration for computing the deduction under Section 80HHC.

8. On further appeal before the tribunal vide order dated 13th May, 2003, the tribunal held that the assessee during the course of survey had surrendered Rs.75 lacs under the head “business income”. The said surrender has to be accepted as a whole and not on piecemeal basis. Rs.75 lacs, which was surrendered has

to be assessed under the head "business income". The exa

reasoning of the tribunal reads as under:-

> "3. After hearing rival submissions and perusing the material on record, we find that assessee deserves to succeed in its appeal. We have seen the copy of statement recorded during the survey operation and find that assessee surrendered a sum of Rs.75 lakhs under the head "Business income". This surrender was made by assessee subject to treating the same as business income and not to levy any penalty under the provisions of law. The English version of the statement recorded of the assessee s placed from pages 19 and 20 of the paper book. We have further seen that the AO has accepted the contention of the assessee in a way that no penalty u/s 271(1)(c) were initiated while completing the assessment u/s 143(3) of the Income Tax Act. In our considered view, the Assessing Officer was not justified in not accepting the claim of the assessee that the income of Rs.75 lakhs was surrendered as business profits, which was subject to non-levy of penalty u/s 271(1)(c) etc. As stated above, the Assessing Officer herself accepted the conditional surrender as no penalty u/s 271(1)(c) was initiated. Therefore, we are of the view that surrender should have been accepted as a whole, instead of in piecemeal. The CIT(Appeals) also confirmed the action of the Assessing Officer. In our considered view, the CIT(Appeals) was also not justified in not accepting the claim of the assessee of business profits. We have also seen the other documents placed in the paper book and found that the assessee has passed necessary entries in the books of accounts showing the same as business profits. It is also noticed from the details

> placed on record that no evidence whatsoever was found during the course of survey, which suggests that income was not earned by assessee from its regular business activities. The surrender made by the assessee was accepted as it is. Therefore, we hold that the CIT(Appeals) was also not justified in treating the same as deemed income u/s 68 and 69-A of the Income Tax Act. Therefore, in view of all these facts and circumstances, we hold that income surrendered by the assessee was part of business profit. Accordingly we direct the AO to treat the same as business profits and as per formula for calculating the deduction under section 80HHC of the I.T. Act, the deduction is calculated."

9. Revenue has preferred ITA No. 16/2004 against this order and vide order dated 30th January, 2004 the following substantial question of law has been framed:

> "Whether the ITAT was correct in law in directing the AO to treat the surrendered income as business profits and to calculate the deduction under Section 80HHC?"

10. Pursuant to the direction of remit in the order dated 13th May, 2003, the Assessing Officer recomputed the deduction under Section 80HHC vide order dated 10th September, 2003. He held that surrendered amount of Rs.75 lacs comes within the ambit of Explanation bba to Section 80HHC and 90% of the said amount should be reduced from the income under the head

"profits and gains of business and profession". He computed tl deduction under the said Section at Rs.29,20,109/-.

11. In the first appeal, preferred by the assessee, the CIT(Appeals) vide order dated 6th August 1998 held that the tribunal had directed that Rs.75 lacs, as surrendered, should be treated as business profit and the deduction should be accordingly calculated. He observed that the Assessing Officer while giving appeal effect had not correctly computed the deduction under Section 80HHC. He must strictly comply with the directions given by the tribunal and in case the Assessing Officer had any grievance and was not satisfied with the order of the tribunal, Reference before the High Court was the remedy.

12. Pursuant to the said directions, the Assessing Officer recomputed the deduction under Section 80HHC and enhanced the same to Rs. 84,88,511/-, the figure claimed in the return.

13. The Commissioner of Income Tax, Delhi-IX issued notice and invoked the revisionary power under Section 263 of the Act. Vide order dated 1st April, 2004, the Jurisdictional Commissioner held as under:-

> "18. In view of the above, I hereby proceed to determine both the aforesaid issues on the basis of facts and circumstances of the case and in default of the assessee saying anything in respect of either of them. It is

quite clear, and there can hardly be any dispute about it, that the surrendered income of Rs.75 lacs did not have any element of export profit in fit, because in order that an unaccounted profit may have an element of export profit, there must be a corresponding unaccounted export turnover, or a corresponding inflation of export expenses. There is no evidence of either, nor is there any contention or admission by the assessee to that effect. Secondly, the unaccounted turnover (which can only be domestic turnover) which would yield a profit of Rs.75 lacs has only to be estimated on some reasonable basis in default of the assessee furnishing any information or evidence in regard to it. Since the declared gross profit rate of the assessee is 15.76%, the undisclosed turnover that would yield a gross profit of Rs.75 lacs at the same gross profit rate will be Rs.7500000x100/15.76=47588832. In fact, if a net profit rate were to be applied instead of a gross profit rate, the estimated undisclosed turnover will be even more. But to give benefit of all doubts to the assessee, let eh estimate of undisclosed turnover be adopted at Rs.47588832/- only.

19. Now the export profit of the assessee as per formula given in section 80HHC(3) will be (profit of the business as per books)x(export turnover)/(total turnover as per books)=2756083 x 26783345 /32492658=271809. This is because even though the surrendered profit of Rs.75 lacs is treated as business profit as determined and directed by the Hon'ble ITAT, the same cannot be adopted for the purposes of allocation in terms of the formula given in section 80HHC(3). As has been discussed in paragraph 12 above, the formula provides for the allocation of profit of the business

between export business and local business in the ratio of respective turnovers of the export business and the local business. The assumption that the profit of the business to be located comprises of export profits as well as domestic profits is inherent in the formula, and to hold otherwise would be absurd and irrational. Since the surrendered profit of Rs.75 lacs admittedly has no element of export profit, therefore the same cannot be included in the profit of the business for the purposes of application of the formula given in section 80HHC(3). Hence, the assessee is entitled to the deduction of Rs.2271809/- only under Section 80HHC in accordance with the finding of the Hon'ble ITAT.

20. Even if it is assumed, though not conceded, for the sake of argument that the profit of Rs.75 lacs is to be included for the purposes of the formula given in section 80HHC(3) than the estimated turnover referable to the said profit of Rs.75 lacs will also have to be included in the total turnover in applying the formula given Section 80HHC(3). Hence the export profit and the deduction shall work out to (Rs.2756083+7500000)x(26783345)/(32492 658+47588832)=3693 481/-. Thus even on this basis the maximum deduction admissible to the assessee will be Rs.36.93 lacs only.

21. However, for reason stated in paragraphs 12 and 19 above, it is held that in accordance with the finding of the Hon'ble ITAT the assessee is entitled to deduction u/s 80HHC of no more than Rs.2271809/-. The total income of the assessee shall therefore be Rs.10297979-2271809=8026170/- in place of Rs.1809468/- determined by the Assessing

> Officer in his order dated 8.1.2004. The assessing office is directed to give effect to this order and to raise the additional demand of tax as well as interest under sections 234B, 234C and 234D in accordance with the mandatory provisions of the said sections."

14. The assessee preferred an appeal before the tribunal against the said order and by the order dated 29th March, 2005, the tribunal has held as under:-

> "We have heard the parties and perused the records of the case. The clause(c) of the Explanation to Section 263 provides that where any order passed by AO had been the subject matter of any appeal, the power the commission u/s 263(i) shall extend to such matters as has not been considered and decided in such appeal. The Tribunal and CIT(A) has decided that the surrendered amount of Rs.75 lacks constituted the business profit. However, the issue whether the surrendered profit of Rs.75 Lakhs included any profit derived from export was never considered and decided by the Tribunal. Further, what was the corresponding turnover, whether local or export, from which the surrender profit was desired, was also not considered and decided by the Tribunal. Both these issue had to be decided before effect could be given to the order of the Tribunal read with the order of CIT. Therefore any error or omission on the part of AO in doing so can be the subject matter of revision u/s 263 of the Act. We find that the ld. CIT has correctly exercised its power of revision u/s 263 in the matter. However, there appears to no material brought on record by the CIT

> that the assessee has carried out any unaccounted purchases and unaccounted sales. Hence the addition to the turnover as worked out by CIT cannot be sustained. However there is force in the contention of the ld. CIT that there could not be any profit without turnover. Hence we accept the finding of the ld. CIT to the extent that the turnover should be increased by the sum of Rs.75 Lakhs. The said turnover may be divided between local turnover and export turnover in the same ratio as otherwise disclosed in the accounts of the assessee. The AO is directed to recompute the deduction u/s 80 HHC of the Act accordingly and allow the same to the assessee."

This order is impugned in the two cross-appeals by the Revenue and the assessee, i.e., ITA No. 1070/2005 and ITA No. 24/2006 respectively

15. ITA No. 1070/2005 was admitted to hearing on 26th October, 2005 and the following substantial question of law was framed:-

> "Whether the view taken by the ITAT that the turnover of the assessee should be increased only by Rs.75 lakhs and divided between local and export turnover in the same ratio as otherwise disclosed in the account of the assessee is perverse?"

16. ITA No. 24/2006 was admitted to hearing and vide order dated 24th September, 2007 the following substantial questions of law were framed:-

> "1. Whether, on the facts and circumstances of the case the Income Tax Appellate Tribunal ('Tribunal') erred in holding that the order of the Assessing Officer dated 8th January, 2004 giving effect to the directions of the Commissioner of Income Tax (Appeals) [CIT(A)] dated 28th November, 2004 was erroneous and prejudicial to the interest of the Revenue for the purposes of Section 263 of the Income Tax Act, 1961 ('Act')?
>
> 2. Whether, on the facts and circumstances of the case the Income Tax Appellate Tribunal ('Tribunal') was justified in holding that issues with regard to the export profit and turnover were not the subject matter of the appeal before Commissioner of Income Tax (Appeals) [CIT(A)] and the Tribunal and therefore the invoking of Clause (c) to the Explanation to Section 263(1) of the Act was justified?"

ITA No. 16/2004

17. This appeal according to us is the main appeal and the question of quantum of the deduction under Section 80HHC depends upon our decision in this Appeal. We have reproduced the exact reasoning given by the tribunal in their order dated 13th May, 2003. We have also noticed the facts recorded above, which are undisputed. The assessee had surrendered an amount of Rs.75 lacs and the precise statement made during the course of survey has been reproduced above in paragraph

4. For the sake of convenience, we again reproduce the relevant portion of the said statement:-

> " The above surrender which is rounded off to Rs.75.00 lakhs is made under the head business income to buy peace with the department on the explicit understanding that penalty proceedings under any of the provisions of I.T. Act would not be initiated consequent to this order."

18. The aforesaid surrender was made on 5th December, 1996 after Hemant Goel was questioned on the excess cash of Rs.13,82,908/- and the difference in the stock of gold ornaments and diamonds to the extent Rs. 57,16,600. The return of income was filed subsequently on 28th October, 1997. The factual position that the assessee after the survey and surrender on 5th December, 1996, had made an entry in the books of accounts to include and had shown Rs.75 lacs as business profit is immaterial. Passing of the said entry has been noticed and forms the basis of the favourable legal finding by the tribunal. This is not a good or sound legal ground and reason. Further, the tribunal has not explained or stated why and how it had recorded or reached the conclusion that no evidence was found during the course of survey. Tribunal has held that the surrender of Rs.75 lacs should be treated as business income

as at the time of survey, the assessee had made a concessi with the rider/ condition that the said surrender was as business income and that this had been accepted by the Department. Even if we accept the said reasoning of the tribunal, it is difficult to comprehend and accept the direction recorded by the tribunal, which reads:

> "Accordingly we direct the AO to treat the same as business profits and as per formula for calculating the deduction u/s 80-HHC of the Income Tax Act, the deduction be calculated".

19. The aforesaid direction has been understood by the assessee to mean a direction that the surrender was a part of undeclared income which qualifies for deduction/ exemption under Section 80HHC. Before us also the assessee has raised the same contention and relied upon the order dated 6th August 1998 passed by the CIT(A).

20. Section 80HHC is a part of Chapter VI A and provides for deduction in respect of income/profits derived from exports made out of India of any goods or merchandise. Exports profits during the relevant period were entirely exempt and had to be reduced from the taxable income. On export profits/ income earned as computed under Section 80HHC, no tax was payable.

We have to examine whether the aforesaid direction is right, justified and as per law.

21. To qualify for the said deduction various stipulations and requirements mentioned in Section 80HHC have to be satisfied. These include the requirement that the assessee should have received remittance of the export proceeds in convertible foreign exchange. Sub-section 3 to Section 80HHC prescribes the formula when an assessee has both export turnover and domestic sales, as in the present case. It requires computation of the export turnover, total turnover and business income. Thereafter, on a proportionate basis, profits earned from the export business are computed and treated as derived from the exports. Relevant portion of Section 80HHC(3) reads;-

> "(3) For the purposes of sub-section (1),—
>
> (*a*) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;
>
> (*b*) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;
>
> (*c*) where the export out of India is of goods or merchandise manufactured or processed by the

> assessee and of trading goods, the profits derived from such export shall,—
>
> (*i*) in respect of the goods or merchandise 63[manufactured or processed by the assessee], be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and
>
> (*ii*) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods:"

22. The total gold and gold jewellery sales in India or domestic turnover as per books was Rs. 55,21,317/-. Sale of gold and gold jewellery outside India or exports as per books was Rs. 2,65,70,917/-. Another figure of Rs. 2,12,428/- was shown as foreign exchange fluctuation. Adding the export turnover to the foreign exchange fluctuation gives a figure of Rs. 2,67,83,345/-. This is the amount as noticed above was mentioned in the total export turnover by the assessee. The total turnover including the domestic turnover, therefore comes to Rs. 3,24,94,658/-. This figure does not include the surrendered business income of Rs.75 lacs. The said figure has not been given and mentioned by the assessee in the turnover. As per the books, the business income/profits earned was Rs.27,56,082/-. If we include figure of Rs. 75 lacs to the profit earned on turnover, the profits would go

up substantially from Rs. 27,56,082/- to Rs. 1,02,56,082/-. B... this would distort computation and calculation under section 80HHC. The business profit depends upon the turnover. We cannot include an amount in the profit/income without appropriate and required increase in the turnover when we apply the formula mentioned in 80HHC(3). In the present case we do not have the figure of turnover on which Rs. 75 lacs was earned and disclosed as income. Rs. 75 lacs, therefore, cannot be added to the business income while computing deduction as per the formula under Section 80HHC(3) of the Act.

23. When we examine the computation made and pressed by the assessee it is apparent that the tribunal has misdirected itself by directing that Rs. 75 lacs was a part of the profits/ income earned. The surrender of Rs. 75 lacs would have no meaning, if the direction of the tribunal is accepted as correct. If Rs. 75 lacs is treated as business profit, the deduction declared under Section 80HHC as submitted by the assessee works to Rs. 84,53,978/-. If this amount is not taken into consideration as part of business profit, then the deduction under Section 80HHC is Rs. 22,71,800/-. The difference in the two figures is Rs. 61,82,178/-. In other words, the actual surrender made by the assessee was Rs. 13,18,000/- only and not Rs. 75 lacs. This

was obviously not the intention when the surrender was mad The intention was that Rs.75 lacs would be added to the business income and taxed. The assessee was clearly going behind the statement and what was agreed and understood when he had surrendered Rs. 75 lacs. The tribunal lost sight of the aforesaid factual position and by making the aforesaid observation without any reasons has given an unintended and unacceptable relief. The export and domestic turnover include the income earned plus expenditure and manufacturing cost. Net business income of Rs. 75 lacs itself cannot be added to the total turnover for obvious reasons, while we compute export profits under Section 80HHC(3). Treating the surrendered amount as business income will lead to anomalies while computing deduction under Section 80HHC(3). The formula itself will be unworkable, as including the figure of Rs.75 lacs to business profits would lead to absurdities and incongruities, which are not acceptable.

24. Learned counsel for the assessee during the course of arguments had submitted that surrendered income of Rs.75 lacs includes and represents over invoicing and fictitious expenditure shown and recorded in the books of accounts relating to the export turnover. The said contention has to be rejected for

number of reasons. Firstly and foremost the said contention is not recorded in the impugned order or the authorities. Secondly, it does not stand to logic that an assessee would inflate export related expenses when the income or earning from exports was completely exempt but income earned from domestic turnover was fully taxable. The contention raised by the assessee is a surmise and conjecture and should be rejected.

25. The surrender was made under the head "business income" but it was not stated by the assessee that this surrender related to the business income earned during the year in question. The surrender could be in respect of business income earned in the earlier years. It would be, therefore, impossible to compute the deduction as per the formula under Section 80HHC(3) in the absence of the exact and full facts and computation of the turnover on which this amount of Rs.75 lacs was earned. In these circumstances, it is best and what is required, is to exclude and to not take into consideration Rs.75 lacs as business profits earned during the year in question for computing deduction under Section 80HHC.

26. In ***National Legguard Works versus Commission of Income Tax (Appeals)***, (2007) 288 ITR 18 (P&H), the assessee surrendered of Rs.12 lacs as business income at the time of

survey. The contention of the assessee was that said surrend should be treated as income from exports as the assessee was an export oriented unit. The surrendered amount was treated and reflected in the profit and loss account as profits derived from exports. The assessee was unsuccessful before the tribunal and the High Court affirmed the decision observing that deduction under Section 80HHC could be claimed only on showing facts which make an assessee eligible for the deduction. There was no presumption that the surrender made was on account of unexplained stocks representing the export income. It was further observed that burden to prove to said facts was on the assessee and not on the Revenue. We fail to understand how this decision helps and supports the case and the stand of the assessee. The said decision supports the version and the stand of the Revenue. Similarly, in ***Commissioner of Income Tax versus Bawa Skin Company*** (2007) 294 ITR 537 (P&H), the Assessing Officer rejected the books of accounts under Section 145 of the Act and had made an addition of Rs. 2,50,000/- in the trading account. In the first appeal, this amount of Rs. 2,50,000/- was directed to be included for computing deduction under Section 80HHC. The tribunal affirmed the said decision. In the said case, the

assessee had both domestic as well as export turnover. Tl addition made was not to the turnover but by applying a higher GP rate. The factual matrix was different. The Punjab and Haryana High Court again ***in Sarla Handicraft Private Limited versus Additional Commissioner of Income Tax***, (2008) 296 ITR 94 examined a case in which surrender of Rs.13 lacs and Rs. 6 lacs was made at the time of survey on account of discrepancy in stock and investment in construction of the building, respectively. The surrender was added to the business income and the assessee had claimed benefit under Section 80HHC. Before the tribunal it was pleaded that the assessee was 100% export oriented unit and did not have any other source of income. However, the said contention was not accepted. The High Court affirmed the said decision holding that there cannot be any presumption that the surrender made represents income from exports. The assessee therefore cannot claim that the surrendered income should be treated as income from business for purpose of calculating deduction under Section 80HHC.

27. In view of the aforesaid position, we have no hesitation in answering the aforesaid question of law in ITA No. 16/2004 in negative, i.e., in favour of the Revenue and against the

respondent assessee. In view of our findings recorded above, the appeal Nos. 24/2006 and 1070/2005 are rendered infructuous and need not be answered. Substantial question of law framed therein are not answered. No costs.

-sd-
(SANJIV KHANNA)
JUDGE

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(R.V. EASWAR)
JUDGE

APRIL 17, 2012
VKR