
(2008) 07 KAR CK 0084

In the Karnataka High Court

Case No : Income Tax A. No's. 25, 298 and 327 of 2003

CIT and Another

APPELLANT

Vs

Gokuldas Exports and Others

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Income Tax Act, 1961 — Section 129, 143 (3), 143 (3) (a), 260 A

Citation : (2008) 07 KAR CK 0084

Hon'ble Judges : Deepak Verma, Acting C.J.; Anand Byrareddy, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; G. Sarangan, K.P. Kumar, S. Parthasarathi, R.V.S. Naik for King and Partridge in I.T. A. No. 298 of 2003, Indra Kumar, A. Shankar and Ashok Kulkarni amici curiae., for the Respondent

Judgement

Deepak Verma Actg., C.J.—Heard Sri M. V. Sheshachala, learned Counsel for the Appellants and Sri S. Sarangan, Sri K.P. Kumar, learned senior counsel with Sri S. Parthasarathi, learned Counsel for the Respondents. Sri Indra Kumar, learned senior counsel, Sri A. Shankar and Sri Ashok Kulkarni appeared on our request as amicus curiae.

2. This order shall govern disposal of I.T. A. No. 25 of 2003, I.T. A. No. 298 of 2003 and I.T. A. No. 397 of 2003, as in all these appeals the same substantial question of law arises for our consideration. Thus they were heard analogously and are being disposed of by a common order.

3. The aforesaid three appeals have been preferred by the Revenue u/s 260A of the income tax Act, 1961, against three different but identical orders passed by the income tax Appellate Tribunal.

4. For the sake of convenience we are taking the facts as appearing in I.T. A. No. 298 of 2003 CIT v. Paprika Wear.

5. the Assessee is a partnership firm, which had filed its return of income for the assessment year 1995-96 on October 27, 1995 declaring income of Rs.

41,16,376. The said return was processed u/s 143(3) (a) of the Act. Thereafter the Assessing Officer proceeded to pass regular assessment u/s 143(3) of the Act, vide order dated March 3, 1997. The Commissioner of income tax (hereinafter referred to "the CIT") was of the opinion that the order of the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue. Thus he exercised the powers conferred on him u/s 263 of the Act.

6. According to him, the Assessing Officer had failed to apply Clause (baa) of the Explanation to Sub-section (4A) of Section 80HHC of the Act. Hence he directed notice to the Assessee.

7. In response to the notice issued to the Assessee, it submitted that the interest was earned on fixed deposits and the deposits were solely and exclusively for the purpose of business. Similar deductions have been allowed by the Assessing Officer for the assessment year 1990-91 without there being any notice issued, thus on the doctrine of parity, the order passed by the Assessing Officer should be accepted. It further contended that the order of the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue, thus the notice deserved to be dropped.

8. However, the Commissioner of income tax was of the opinion that Clause (baa) of the Explanation to Sub-section (4A) u/s 80HHC of the Act, speaks of receipts by way of interest etc. Though the interest may be part and parcel of the profit of the business, yet 90 per cent, of the gross receipt of it. has to be disallowed in view of this Explanation. Consequently the Assessing Officer was directed to modify the assessment by applying Clause (baa) of the Explanation to Sub-section (4A) of Section 80HHC of the Act on the gross interest receipt of Rs. 48,85,511.

9. Feeling aggrieved by the said order passed by the Commissioner of 9 income tax, the Assessee preferred I.T. A. No. 403/Bang/99 for the aforesaid assessment year before the income tax Appellate Tribunal. Essentially the Assessee raised the following two grounds before the Tribunal.

1. The Commissioner of income tax gravely erred in passing the impugned order exercising the powers conferred on him u/s 263 of the Act, which does not even reflect as to which order was considered to be erroneous and prejudicial to the interests of the Revenue warranting exercise of revisional power and which order was to be revised and deserved to be set aside.

2. The Commissioner of income tax further gravely erred in not addressing the contention raised by the Assessee that it is the net interest which is to be reckoned and not interest earned alone ignoring the interest payments.

Critical examination of the impugned order passed by the Tribunal shows that the aforesaid question No. 1 has not at all been considered or answered by the Tribunal either way.

10. A perusal of the memo of appeal filed by the Revenue reflects that even

though some other substantial questions of law have been formulated in the same but after having heard the learned Counsel for the parties and after perusal of the record, we are of the opinion that only the following two substantial questions of law would arise in the appeals which are required to be answered by us. Thus before hearing the appeals on the merits, we have formulated the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the Commissioner of income tax was justified in invoking the powers conferred on him u/s 263 of the Act, without specifically holding therein as to how the order of the Assessing Officer was erroneous and prejudicial to the interests of the Revenue ?

2. Whether on a true construction of the Explanation (baa) appended to Sub-section (4A) of Section 80HHC of the Act, interest, rent, commission earned by the Assessee are to be deducted from the export profits or only net receipts, if any, after taking into account the payments made by the Assessee for the purposes of computing deductions u/s 80HHC of the Act ?

11. The aforesaid substantial question of law at No. (1), would arise for our consideration in I.T. A. No. 298 of 2003 and I.T. A. No. 327 of 2003, whereas question (2) as formulated herein above would arise for consideration in I.T. A. No. 25 of 2003 only.

12. Taking up question (1), we have to first examine, if the Commissioner of income tax was justified in invoking the powers conferred on him u/s 263 of the Act or not. For the said purposes Section 263 which deals with the powers of revision by the Commissioner is reproduced herein-below:

263. Revision of orders prejudicial to Revenue.--(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the Assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation.--For the removal of doubts, it is hereby declared that, for the purposes of this Sub-section,--

a. an order passed on or before or after the 1st day of June, 1988, by the Assessing Officer shall include-

i. an order of assessment made by the Assistant Commissioner or the Deputy Commissioner or the income tax Officer on the basis of the directions issued by the Joint Commissioner u/s 44A;

ii. an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned

to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf u/s 120;

b. record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

c. where any order referred to in this Sub-section and passed by the Assessing Officer had been the subject-matter of any appeal, filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this Sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

2. No order shall be made under Sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

3. Notwithstanding anything contained in Sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.--In computing the period of limitation for the purposes of Sub-section (2), the time taken in giving an opportunity to the Assessee to be reheard under the proviso to Section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

13. A bare reading of the aforesaid provision makes it abundantly clear that the Commissioner has power to call for and examine the record of any proceedings under the Act provided he is of the opinion that the order is erroneous in so far as it is prejudicial to the interests of the Revenue. Only thereafter notices can be directed to be issued to the Assessee so as to call for his objections.

14. We have carefully gone through the order passed by the Commissioner in this regard. The order does not show or reflect any cogent and valid reasons for coming to the conclusion that the assessment order was found to be erroneous and prejudicial to the interests of the Revenue. As mentioned hereinabove, the Assessee had disclosed gross interest on receipt of Rs. 48,65,511, but after claiming deduction as contemplated u/s 80HHC of the Act, according to it, the net interest worked out was Rs. 45,51,207 as it was also required to spend money by way of interest to the loans obtained by it during the course of business.

15. By a long catena of judgments of various High Courts and the Supreme Court, it is too well settled that if in the given facts and circumstances of the case, two views are possible and one view has been adopted by the Assessing

Officer, then that alone would not be sufficient to exercise the powers u/s 263 of the Act by the Commissioner of income tax.

16. The phrase "prejudicial to the interests of the Revenue" u/s 263 of the Act has to be read in conjunction with the expression "erroneous" order by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue.

17. It appears that one of the views that has been taken in this case by the Assessing Officer was on account of the fact that Section 80HHC has been amended by Parliament as many as 11 times. Unfortunately, even after 11 amendments, the clouds of confusion have not been cleared and the doubt still looms large in the minds of the Revenue, which resulted into passing of the order by the Assessing Officer, allowing the deduction u/s 80HHC of the Act as claimed by the Assessee, which according to him was lawfully permitted.

In this regard see

i. MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX,

ii. Commissioner of Income Tax Vs. Max India Ltd.,

18. In view of the aforesaid settled legal position, we are of the considered opinion that the Commissioner of income tax committed a grave error in invoking the jurisdiction conferred on him u/s 263 of the Act. Thus the said question (1) is answered in favour of the Assessee and against the Revenue.

19. Even though answer to this question would have been sufficient to dismiss the two appeals, i.e., I.T. A. No. 298 of 2003 and I.T. A. No. 327 of 2003 as the said question having been decided in favour of the Assessee, which goes to the root of the matter and we may not be called upon to address question (2) at all. But as mentioned hereinabove, this question does not arise in I.T. A. No. 25 of 2003, in which only question (2) arises for consideration. Thus we are now addressing the second question.

20. To appreciate the legal position with regard to the applicability of the Explanation (baa) to the facts of the case, we reproduce in succeeding para relevant provisions of law, as applicable to the facts of the appeal.

21. As has been mentioned hereinabove Section 80HHC was first inserted by the Finance Act, 1983 with effect from April 1, 1983, but it has undergone several changes so far, that is to say, 11 times it has been amended. The relevant part of the provisions which are applicable to the facts of this case as they exist, are mentioned hereinbelow.

80HHC. Deduction in respect of profit retained for export business.--(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 (IB), derived by the Assessee from the export of such goods or merchandise:....

3. For the purposes of Sub-section (1),--...

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,...

(baa) profits of the business means the profits of the business as computed under the head Profits and gains of business or profession as reduced by-

1. ninety per cent, of any sum referred to in Clauses (iia), (iib), (iic), (iid) and (iie) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

22. The aforesaid provision of law was brought into the statute book with a view to encourage large exports of certain goods and for providing tax reliefs to Indian companies and non-corporate tax payers resident in India whose export turnover for a year exceeds export turnover for the immediately preceding year by more than 10 per cent, thereof.

23. Learned Counsel for the Revenue strenuously submitted that a true and correct interpretation of Clause (baa) to the Explanation to Sub-section (4A) of Section 80HHC means interest income declared by the Assessee while computing the profits of business for the purpose of computing deduction u/s 80HHC of the Act and 90 per cent, of interest earned has to be reduced. It was therefore contended that the impugned order of the Tribunal cannot be sustained in law when it allows net interest to be reduced from the profits of the business.

24. On the other hand learned Counsel for the Assessee submitted that it is the net interest which is to be reckoned and not interest receipts alone for the purpose of claiming deductions under the aforesaid provision of law.

25. Both sides have cited very many authorities of High Courts and the Supreme Court to put across their rival contentions.

26. According to the Revenue, judgments of the Punjab and Haryana High Court reported in *Rani Paliwal Vs. Commissioner of Income Tax*, , the Madras High Court reported in *Commissioner of Income Tax Vs. V. Chinnapandi*,) settle the issue in favour of the Revenue. Reliance has also been placed on two judgments of the Supreme Court reported in *Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair*, and *Hero Exports v. CIT* (2007) 295 ITR 454 (SC). In the matter of *Rani Paliwal Vs. Commissioner of Income Tax*, only this much finding has been recorded by the Punjab and Haryana High Court which is reproduced hereinbelow (page 222):

This issue relates to the inclusion of interest as part of the asses-see's business income for working out the deduction claimed u/s 80HHC of the Act. The total

interest received by the Assessee during the relevant assessment year was Rs. 6,33,454 and the total interest paid by the Assessee was Rs. 4,12,982. The Assessing Officer was of the view that 90 per cent, of the gross amount of interest of Rs. 6,33,454 was liable to be deducted from the profits, of the business for the purpose of deduction. He, therefore, reduced the quantum of deduction u/s 80HHC of the Act accordingly. The Commissioner of income tax (Appeals), however, took a different view in appeal and allowed 90 per cent, of the amount of interest to be deducted after deducting a sum of Rs. 4,12,982 which had been paid by the Assessee as interest during the assessment year. The Tribunal again affirmed the view of the Assessing Officer holding that 90 per cent, of the interest that was deductible for the claim u/s 80HHC of the Act was from the gross interest received by the Assessee and that the amount of interest paid by the Assessee could not be deducted therefrom. A plain reading of Clause (baa) of the Explanation to Section 80HHC of the Act makes this aspect quite clear and we are of the view that the Tribunal was right in disallowing the claim of the Assessee in this regard.

27. In the matter of Commissioner of Income Tax Vs. V. Chinnapandi, , the Madras High Court was made reference to Rani Paliwals case and held as under (page 392):

On a plain reading of the provision, it is clear that what the provision stipulates is that profits of the business for the purpose of Section 80HHC of the Act mean the profits of the business as computed under the head Profits and gains of business or profession. While computing such profits under the head Profits and gains of business or profession, if any receipt by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is included in such profits, the same has to be reduced by 90 per cent, from the profits computed as aforesaid. The deductions to be made are from the amount of profits so computed and not from the amount computed under any other head of income of that Assessee. No reference of net interest is mentioned in the said clause. What we have to see is only the nature of receipt as contemplated under the clause. No deduction is permissible. Once the receipt of the interest is known, 90 per cent, of the same is to be reduced from the profits without deducting any amount. This Court in the case of K.S. Subbiah Pillai and Co. (India) Pvt. Ltd. Vs. Commissioner of Income Tax, , held as follows (page 305):

The clause does not refer to net interest. It refers, inter alia, to the interest included in the profits and gains of the business or profession....

Clause (baa) under the Explanation to Section 80HHC defines profits of the business as computed under the head "Profits and gains of business or profession". The deductions to be made are from the amount of profit so computed and not from the amount computed under any other head of income of that Assessee. The reference to "such profits" in Sub-clause (1) of Clause (baa) can only be to the profits of the business computed under the head "Profits and gains of business or profession". Addition of prefix "the" to "profits" in Clause

(baa), while referring to the profits and gains of business or profession makes it clear that it is only the amounts already included in that computation which are now to be reduced to the extent of 90 per cent., if those items are included in Sub-clause (1) of that definition ...

In view of the above, we are of the view that 90 per cent, of the interest that is deductible for the claim u/s 80HHC of the Act is from the gross interest received by the Assessee and that the amount of interest paid by the Assessee should not be deducted therefrom and, hence, we answer the above question in favour of the Revenue and against the Assessee and allow the tax case filed by the Revenue. No costs.

28. Further the Delhi High Court in the matter of Rishi Dev Batra Vs. Dr. (Mrs.) Anup Suri has taken a contra view: after elaborately discussing the judgments of various High Courts and the Supreme Court on the point In the aforesaid case it has been held as under (headnote):

The idea of Section 80HHC is to ensure that the exporter gets the benefit of the profits derived from export and not to depress the profit further. Therefore, it can only be the net interest which can be included in the profits. If netting were not to be permitted the result would be that the profits of the exporter would be depressed by an item that is expenditure incurred on earning interest, which does not form part of the profit at all. This could not have been the intention of the Legislature.

Explanation (baa) is relatable only to Clause (a) of Section 80HHC(3) and not to Clause (b) thereof. These operate in distinct areas and no inter-mixing is contemplated. Hence the word interest in Clause (baa) to the Explanation in Section 80HHC is indicative of net interest, i.e., gross interest less the expenditure incurred by the Assessee in earning such interest.

To summarise the conclusions: (i) In computing what the profits derived from exports for the purposes of Section 80HHC(1) read with Section 80HHC(3) are, the nexus test has to be applied to exclude that which does not partake of profits that can be said to have been derived from the business of exports, (ii) In the specific context of Clause (baa) of the Explanation to Section 80HHC, while determining the profits of the business, the Assessing Officer has to undertake a two-step exercise in the following sequence. He has to first compute the profits of the business under the head Profits and gains of business or profession. In other words, he will have to compute business profits, in terms of the Act, by applying the provisions of Sections 28 to 44 thereof, (iii) In arriving at the profits of the business by the above method, the Assessing Officer will exclude all such incomes which partake of the character of income from other sources which in any event are treated under Sections 56 and 57 of the Act and are therefore not to be reckoned for the purposes of Section 80HHC. (iv) Where surplus funds are parked with the bank and interest is earned thereon it can only be categorised as income from other sources. This receipt merits separate treatment u/s 56 of the

Act which is outside the ring of profits and gains from business and profession. It goes entirely out of the reckoning for the purposes of Section 80HHC. (v) Interest earned on fixed deposits for the purposes of availing of credit facilities from the bank, does not have an immediate nexus with the export business and therefore has to necessarily be treated as income from other sources and not business income, (vi) Once business income has been determined by applying accounting standards as well as the provisions contained in the Act, the Assessee would be permitted, in terms of Section 37 of the Act, to claim as deduction, expenditure laid out for the purposes of earning such business income, (vii) In the second stage, the Assessing Officer will deduct from the profits of the business computed under the head Profits and gains of business or profession the following sums in order to arrive at the profits of the business for the purposes of Section 80HHC(3): (a) 90 per cent, of any sum referred to in Clauses (iia), (iib) and (iic) of Section 28, i.e., export incentives; (b) 90 per cent, of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and (c) profits of any branch, office, warehouse or any other establishment of the Assessee situate outside India, (viii) The word interest in Clause (baa) of the Explanation connotes net interest and not gross interest. Therefore, in deducting such interest, the Assessing Officer will take into account the net interest, i.e., gross interest as reduced by expenditure incurred for earning such interest, (ix) Where, as a result of the computation of profits and gains of business and profession, the Assessing Officer treats the interest receipt as business income, then deduction should be permissible, in terms of Explanation (baa) of the net interest i.e., the gross interest less the expenditure incurred for the purposes of earning such interest. The nexus between obtaining the loan and paying interest thereon (laying out the expenditure by way of interest) for the purpose of earning the interest on the fixed deposit, to draw an analogy from Section 37, will require to be shown by the Assessee for application of the netting principle.

29. Thus to us the rationale and the reasoning recorded by the Delhi High Court appears to be more appropriate and apt in the facts and circumstances of the case. Admittedly, the aforesaid judgment of the Delhi High Court was pronounced on January 12, 2007, whereas the judgments in the matter of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, and Hero Exports (2007) 295 ITR 454(SC) by the Supreme Court came to be pronounced at later point of time. Thus the Delhi High Court did not have the occasion to go through the reasonings in the aforesaid two judgments of the Supreme Court pronounced by it. Therefore it is our duty to see if the controversy as mentioned hereinabove with regard to liability of the deductions under Clause (baa) to the Explanation of Section 80HHC has been set at rest by the Supreme Court or not.

30. Sri Indra Kumar, learned senior counsel appearing as amicus curiae contended that Circular No. 621 dated December 19, 1991 (1992) 195 ITR 154, 176, 178, of the Central Board of Direct Taxes contains explanatory notes on the provisions relating to direct taxes under the Finance (No. 2) Act, 1991. He has

drawn our attention to the heading "Modification of provisions relating to exemption of income from exports". Clause 32 thereof reads as under:

32. The provisions of Section 80HHC of the income tax Act, as they existed, had given rise to some misinterpretations and certain doubts. Moreover, certain genuine difficulties were also witnessed in certain types of transactions. The Finance Act has, therefore, amended Section 80HHC in order to address to these problems.

31. Further attention has also been drawn to Clause 32.10 and 32.11, which are also reproduced herein below:

32.10. The existing formula often gives a distorted figure of export profits when receipts like interest, commission, etc. which do not have element of turnover are included in the profit and loss account.

32.11. It has, therefore, been clarified that profits of the business for the purpose of Section 80HHC will not include receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature. As some expenditure might be incurred in earning these incomes, which in the generality of cases is part of common expenses, ad hoc 10 per cent, deduction from such incomes is provided to account for these expenses.

32. In the light of this clarificatory explanation, Sri Indra Kumar, learned Counsel submitted that ad hoc 10 per cent, deduction from such incomes is provided to account for these expenses. He also placed reliance on the judgment of the Supreme Court reported in *B. Desraj Vs. Commissioner of Income Tax*, .

33. In paragraph 9, the Supreme Court has made the following observations, relevant part thereof is reproduced below (page 442):

By the said circular, the Central Board of Direct Taxes clarified that export incentives, namely, cash compensatory support and duty drawback have to be included in the profits of the business for computing the deduction u/s 80HHC. With the issuance of this circular the point is no more res integra.

34. To highlight the effect of the circular, another judgment of the Supreme Court reported in *State of Karnataka v. Balaji Computers* (2007) 5 v.T 120 (SC) has been placed before us.

35. Sri A. Shankar, learned Counsel submitted that the concept of Section 80HHC is to be seen and the core of the section deals with export profits, which alone are required to be considered. It has also been contended by him that the Explanation appended to any section is to be read in consonance with the main aims and objects of the section and not de hors the main section.

36. Sri Ashok Kulkarni, learned Counsel emphasised on the words "any sum" and "any receipts" as appearing in Clause (b). However, it is clear, that in any case, circular is not required to be placed in a very higher pedestal than the statutory provision of the Act. Even after reading through the circular, it is not

clear as to what is required to be actually done to interpret and to put it to best use of the Assessee and the Revenue both.

37. In the matter of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, , the question that was basically and primarily projected was exclusively with processing charges which is manifest from the following paragraph (page 231):

The narrow dispute which arises for determination is: whether the Department was right in including the processing charges, amounting to Rs. 1,54,68,811, in the total turnover while arriving at export profits u/s 80HHC(3) of the Act, as it stood at the material time.

38. Thus whatever findings have been recorded by the Supreme Court were not directly relatable to the question posed in this appeal. It has therefore been contended by the learned Counsel for the Assessee that the same would only be an obiter and cannot be said to be a binding precedent. It was therefore submitted that the question with regard to consideration of the Explanation (baa) was not at all there before the Supreme Court in the matter of Ravindranathan Nair (supra).

39. Similarly in the matter of Hero Exports, the Supreme Court was essentially dealing with Section 80HHC(3)(b) and Explanation (e). It did not have the occasion to consider Clause (baa) of the Explanation appended to Section 80HHC. Thus the aforesaid two judgments of the Supreme Court do not render help to the Revenue, to arrive at a conclusion in its favour.

40. The relevant part of the order of the Supreme Court in the matter of Hero Exports (2007) 295 ITR 454 (SC) is reproduced hereinbelow, which makes it clear that it was not dealing specifically with Clause (baa) appended to the Explanation (page 465):

We make it clear that we are not reading Explanation (baa) into Section 80HHC(3)(b). What we say is as a guidance value/factor, 10 per cent, of the total other income of Rs. 1,60,000 would be fair estimate. This guidance value is not flowing from Clause (baa) but from the scheme of Section 80HHC read with the Memorandum to the Finance Act of 1991. Take a reverse case, if allocation of expenses is to be done on actual basis, it would not only be very difficult but in some cases actual apportionment may not be in the interest even of the Department

In conclusion, we may state that u/s 80HHC(3)(b) one has to balance the principle of attribution with the concept of allocation. The concept of allocation is meant to reduce the incentive. However, when allocation has to be balanced with the principle of attribution, the object is to reduce the incentive and not to eliminate it.

41. In the light of the foregoing discussion, we are of the considered opinion that the sheet anchor to the facts of this case is the Delhi High Court judgment in the

matter of Shri Ram Honda Power Equip (supra). We say so as that was the case, wherein the direct question posed in this appeal was under consideration and has been answered as such. The reasoning and interpretation employed therein also appears to be reasonable and plausible.

42. We convey our sincere gratitude and thanks to all the learned advocates who had appeared for the parties and especially to Mr. Indra Kumar, senior advocate, Mr. A. Shankar and Mr. A.S. Kulkarni, who readily accepted to be amici curiae of the court. It is on account of their untiring efforts that we are able to reach some conclusion.

43. We are therefore of the considered opinion that the second question also deserves to be answered in favour of the Assessee and against the Revenue. We accordingly do so. The appeal stands disposed of but with no order as to costs. Copy of the order be retained in connected appeals.