
(2013) 02 KAR CK 0151

In the Karnataka High Court

Case No : IT Appeal No's. 2972, 2973, 2974 and 3015 of 2005

Commissioner of Income Tax

APPELLANT

Vs

Infosys Technologies Ltd.

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 02 KAR CK 0151

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : E.R. Indrakumar and Sanmathi Indrakumar, for the Appellant; Percy Pardiwalla, Suryanarayan and Smt. S. Sujatha, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—These appeals filed u/s 260A of the Income Tax Act, 1961 (for short, the Act), by the revenue, are directed against the common order dt. 31-3-2005 passed by the Income Tax Appellate Tribunal, Bangalore A Bench, Bangalore, in respect of four appeals of the respondent-assessee relating to assessment years 1993-94, 1994-95, 1995-96 and 1996-97, corresponding to ITA Nos. 793/Bang/1998, 794/Bang/1998, 795/Bang/1998 and 50/Bang/1998 respectively. The revenue has raised the following substantial questions of law for our examination and answer:

In ITA Nos. 2972, 2974 & 3015 of 2005:

(a) Whether, the Tribunal was correct in holding that section 80HHE of the Act deduction should be allowed to the Assessee without excluding the foreign exchange expenditure incurred by the Assessee during the current assessment year?

In ITA No. 2973 of 2005:

(1) Whether the Tribunal was correct in holding that section 80HHE of the Act deduction should be allowed to the Assessee without excluding the foreign exchange expenditure incurred by the assessee during the current assessment

year?

(2) Whether the Tribunal was correct in holding that the expenses of Rs. 15,89,613 incurred by the assessee towards brick works, cement, plastering, painting walls, ceiling and providing and laying ceramic tiles, providing M.S. grill, internal sanitary fixtures, sewerage works, supply and fixing of water supply pipes on the leased premises would not amount to major repairs as held by the Apex Court in *Ballimal Naval Kishore and Another Vs. Commissioner of Income Tax*,

(3) Whether the Tribunal was correct in holding that the expenses incurred for repairs and maintenance of leased premises for a period of six years should be treated as an allowable revenue expenditure u/s 30(a) of the Act, without taking into consideration the Explanation which omitted capital expenditure from the purview of section 30(a) of the Act and the Explanation being only explanatory was always retrospective?

(4) Whether the Tribunal was correct in holding that the contributions made to Traffic Police, Bangalore, to regulate the traffic on Hosur Road, of a sum of Rs. 6.93 lakhs was out of business compulsions and commercial expediency and therefore allowable u/s 37 of the Act?

(5) Whether the Tribunal was correct in allowing deduction in respect of payments made to police for maintaining traffic without taking into consideration and appreciating that the police were public servants discharging public duty being State Government servants and any payment received to discharge such a public duty is prohibited under law and which is also an offence as per the Indian Penal Code and the Prevention of Corruption Act and therefore, cannot be allowed as a deduction as per Explanation to section 37 of the Act?

Brief background in which these appeals arise is that: The assessee is a limited company and engaged in the business development of software and sale of software for the requirement of their customers and also rendering technical services in connection with the development of software, etc.

2. In relation to the assessment years in question, in the returns of income filed by the assessee, the assessee had put forth a specific claim for deduction under the provisions of section 80HHE of the Act, an incentive deduction provided for under Chapter VI-A of the Act, where under the assessee who had received foreign exchange remittances in India attributable to its activities of export out of India of computer software or its transmission from India to a place outside India by any means or providing technical services outside India in connection with the development or production of computer software, were entitled to claim a deduction in computing the total income of such assessee related to the profits attributable to export activity and the section provided the manner in which such profit is to be computed which amount becomes eligible for claiming deduction in the computation of total income of such an assessee, which has to be worked out on such premise. Excerpts of section 80HHE of the Act, which are relevant for the

purpose of disposal of these appeals, read as under:

80HHE. Deduction in respect of profits from export of computer software, etc.--

(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of,--

(i) "export out of India of computer software or its transmission from India to a place outside India by any means;

(ii) "providing technical services outside India in connection with the development or production of computer software,

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 the profits, referred to in sub-section (1B), derived by the assessee from such business:

Provided that if the assessee, being a company, engaged in the export out of India of computer software, issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export specified therein, the deduction under this sub-section is to be allowed to a supporting software developer, then the amount of deduction in the case of an assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export, the same proportion as the amount of the export turnover specified in such certificate bears to the total export turnover of the assessee.

Explanation.--For the removal of doubts, it is hereby declared that the profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

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(3) For the purposes of sub-section (1), profits derived from the business referred to in that sub-section shall be the amount which bears to the profits of the business, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

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(5) Where a deduction under this section is claimed and allowed in respect of profits of the business referred to in sub-section (1) for any assessment year, no deduction shall be allowed in relation to such profits under any other provision of this Act for the same or any other assessment year.

Explanation--For the purposes of this section,--

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(c) "export turnover" means the consideration in respect of computer software received in, or brought into, India by the assessee in convertible foreign

exchange in accordance with sub-section (2), but does not include freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India;

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(e) "total turnover" shall not include--

(i) any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28;

(ii) any freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India; and

(iii) "*****" expenses, if any, incurred in foreign exchange in providing the technical services outside India;

3. While sub-section (1) of section 80HHE of the Act indicates as to who are of the assessee who can claim the benefit of the deduction u/s 80HHE and in respect of what kind of rates attributable to what kind of activity. Sub-section (2) indicates the conditions subject to which the claim can be put forth. Sub-section (3) provides the manner of computation of the amount qualified for deduction, in the sense, what is the profit, which has to be worked out as per sub-section (3) that qualifies for the benefit under sub-section (1). Sub-section (4) provides for conditions mandated on the assessee to claim such benefit and to provide particulars and information, and the Explanation to sub-section (5) provides the meaning for certain expressions used in the context of this section and for the present purpose what is in issue is the meaning of the phrase export turnover as defined in clause-(c) of the Explanation to section 80HHE and the scope of the phrase total turnover as defined as per clause-(e) of the Explanation to section 80HHE of the Act.

4. Insofar as the present appeals are concerned, the dispute mainly relates to the quantification of the qualifying profits of the assessee attributable to its export activity as provided in the section itself and in arriving at this figure, particularly while computing the figure attributable to the export turnover and the figure attributable to total turnover, as the qualifying amount is that fraction to be arrived at by dividing the export turnover by the total turnover and the profit as arrived at by the assessee in general to be multiplied by this fraction.

5. The particular dispute in the present appeals revolves around the following amounts attributable to each of these appeals:

particularly, as the assessee had indicated that from out of its business activities in supplying software products to its customers abroad, it had incurred expenditure as indicated in column (3) of the above table for each of the assessment years and also indicated that it was on the activity other than marketing offices.

6. The assessee had claimed the benefit u/s 80HHE of the Act on the premise

that it had sold software products to its foreign buyers and therefore claimed the benefit in terms of clause (i) of sub-section (1) of section 80HHE of the Act. The question was as to whether in computing the export turnover and total turnover, as to whether this amount should be deducted from such export turnover and total turnover and this is the bone of contention between the assessee and the revenue.

7. The assessing officer, for each of these assessment years in question, had, while, per se, accepted the stand of the assessee that the activity is one as indicated in clause (i) of sub-section (1) of section 80HHE of the Act, nevertheless, found that the expenditure as indicated in column (3) of the table for each of the assessment years being other than on marketing offices and having regard to the nature of its activities is one attributable to providing of technical services to the clients of the assessee in the foreign countries and therefore directed deduction of this amount or exclusion of this amount while computing the export turnover as well as total turnover.

8. In the appeals filed by the assessee for each of these assessment years, the Commissioner of income tax (appeals), as per the appellate order dt. 13-7-1998, relatable to assessment year 1993-94, examined this question in a little more detail with reference to the nature of the activity of the assessee abroad and the kind of services provided and also supplemental information provided along with the return of income i.e. notes on accounts (schedule-21 of the balance sheet and profit and loss account) and opined that at the entire earnings in foreign exchange relating to the figure Rs. 7,43,70,642 is attributable to rendering technical services abroad; that no amount had been demonstrated by the assessee as earnings from export of computer software and therefore rejected the stand of the assessee that the receipts are not attributable to an activity as envisaged in clause (i) of sub-section (1) of section 80HHE of the Act, but on the other hand considered the amount as an expenditure incurred abroad in connection with rendering of technical services and therefore held that the amount of Rs. 2,24,45,778 should be excluded before arriving at the export turnover figure and so also the total turnover as envisaged in Explanation to section 80HHE of the Act.

9. The Appellate Commissioner expressed the same view in the appeals of the assessee relatable to two following assessment years of 1994-95 and 1995-96 and by a separate order dt. 15-11-2000 in the appeal of the assessee relating to assessment year 1996-97 also, the very reasoning was given to reject the stand of the assessee that the assessing officer was in error in deducting this amount while arriving at the figure of export turnover and total turnover.

10. For such purpose, the Appellate Commissioner looked into the materials placed before him, examined the nature of expenditures which the assessee had claimed as under:

and opined that as the assessee had admitted the expenses attributable to

overseas sales (non-marketing), is a considerable figure at Rs. 2,24,45,978, it is impliedly an expenditure incurred for rendering technical services and therefore requires to be excluded from the total turnover and export turnover. Insofar as other three items are concerned, the matter was sent back to the assessing officer with a direction to the assessee to produce material to substantiate the claim and with further directions.

11. On this aspect, in the appeals of the assessee, the Appellate Tribunal permitted the assessee to produce some general specimen agreements, which the assessee company would enter into with its foreign collaborators and a specific agreement in respect of a Japanese company as an example of the kind of contract and the Tribunal on examination of the terms and conditions in such specimen agreements and a specific agreement of a particular company, went on to opine that the nature of the activities carried on by the assessee in the foreign country and even by deputing its employees for developing on site software in favour of its clients, was in the nature of the business of export out of country of computer software and for such purpose, relied upon not only the clauses in the agreement and made reference to them, more importantly made reference to Explanation to clause (i) of sub-section (1) of section 80HHE of the Act, which had been introduced by Finance Act, 2001 with effect from 1-4-2001 and also the board Circular No. 3/2004 dt. 12-2-2004 and on such basis and accepting the contentions urged on behalf of the assessee by its learned counsel, held that the assessing officer as well as the Appellate Commissioner were not right in opining that the amount which the assessee had made part of the export turnover and which had been disallowed by the assessing officer as well as the Appellate Commissioner on the premise that it was an expenditure attributable to providing technical services outside India in connection with development or production of computer software and therefore held that the activity of the assessee being deemed to be in the nature of export of computer software, while arriving at the export turnover and total turnover for the purpose of this section, there was no scope for deducting this amount from these two figures, as an exclusion of the kind of expenditure as contemplated only in a situation where it is an expenditure incurred in connection with providing technical service in relation to development of software and the assessee's case being one of export of software, there is no question of exclusion contemplated as per the very definition of export turnover in respect of the export of computer software being only in the nature of freight, technical charges or insurance attributable to delivery of computer software outside India and such expenses incurred in foreign exchange otherwise is not one to be excluded and therefore held that export turnover should be computed without excluding the amount which is in issue. The Tribunal passed a common order in respect of the four assessment years and having opined in uniform that the exclusion of the amounts in question is not contemplated as per the definition of export turnover and total turnover under clauses (c) and (e) respectively of the Explanation to section 80HHE of the Act, the revenue is aggrieved by this order of the tribunal and is in appeal before this

Court, as noticed earlier, raising the questions of law as already referred to above.

12. It is in this background, the appeals are examined.

13. Appearing on behalf of the appellant-revenue, Sri E.R. Indrakumar, learned senior counsel, has taken us through the provisions of section 80HHE of the Act as also familiarizes us with the definition of export turnover and total turnover and submits that the Tribunal has without any rhyme or reason and without any material before it, has reversed the finding recorded by the assessing officer as well as the Appellate Commissioner; that the Tribunal has not really applied its mind, particularly to the findings recorded by the assessing officer as well as the Appellate Commissioner that on a detailed examination, the activity was one in the nature of providing of technical services in connection with the development of software; that the assessee had not made good before the assessing officer as well as the Appellate Commissioner by producing commensurate material to demonstrate that it was only export of computer software and not a situation of rendering of service in connection with development of software; that the Tribunal had wrongly applied the observation of the Supreme Court in the case of *Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay*, ; that it has not kept in mind the subsequent judgments of the Supreme Court, particularly, in the case of *State Level Committee and another Vs. M/s. Morgardshammar India Ltd.*, and in the case of *State of Jharkhand and Others Vs. Ambay Cements and Another*, ; that the ratio of these judgments clearly indicates that the observation contained in the judgment of the Supreme Court referred to and relied upon is not the law that holds the field and therefore has submitted that the order passed by the Tribunal is not sustainable as even without the assessee discharging its burden and making good its claim that the activity was exclusively one of export of computer software, whether without the benefit of the Explanation or with the benefit of the Explanation; that the Tribunal without any basis, material or justification, could not have opined to reverse the finding of the Appellate Commissioner, particularly for positively holding that the activity constituted only an activity in the nature of export of computer software. It is therefore urged that reversing the finding of Appellate Commissioner and accepting the stand of the assessee that the amount in issue cannot be excluded from computing the export turnover and total turnover is a flaw, not tenable in law and the appeals deserve to be allowed.

14. Sri Indrakumar, learned senior counsel appearing for the appellants has also submitted that the Appellate Commissioner had remanded the matter to the assessing authority in respect of the expenses relatable to marketing activities and related branches and travel expenses and the Appellate Tribunal has committed an error even without taking note of this remand, in proceeding ahead and holding that the entire-amount is not to be excluded.

15. On the other hand, Sri Percy Pardiwalla, learned senior counsel appearing for the respondent-assessee, has drawn our attention to the assessment order passed by the assessing officer and the manner of computation of relief by the

assessing officer insofar as claim of the assessee u/s 80HHE of the Act is concerned and has submitted that the assessee's claim before the assessing officer that its activity is only one for producing software and even development of onsite software is also on a par with the export of computer software and therefore would fall only under clause (i) of sub-section (1) of section 80HHE of the Act.

16. Sri Percy Pardiwalla, learned senior counsel, has placed reliance on the amendment to this section by introduction of Explanation to section 80HHE of the Act with effect from 1-4-2001 by Finance Act 2001 and the follow up board Circular No. 3/2004 dt. 12-2-2004, clarifying the scope of this amendment and the manner in which the Explanation is to be understood and submits that the amendment by way of adding the Explanation being more clarificatory and that has to be the meaning attributable to the provisions of section 80HHE(1) of the Act since inception; that therefore it should be understood that in view of the fiction created by the Explanation, even assuming there was any ambiguity as to whether the development of computer software onsite in any foreign location by an assessee is a situation where there may be some doubt whether it was so or not, statute has taken care of such situations by creating the fiction and therefore onsite development of computer software (including services of development of software) outside India is only a situation of export of computer software and if so the assessing authority as well as the first appellate authority should not have in any way taken a decision by recording a finding contrary to the statutory provisions.

17. In this regard, Sri Percy Pardiwalla, learned senior counsel, has taken us through the order of the Appellate Commissioner as well as the order of the Appellate Tribunal. Submission is that the Tribunal had an occasion to examine the material before it in the form of paper book which was also available before the lower authorities and the Tribunal having examined and having appreciated the same, has for satisfactory reasons, reversed the finding of the Appellate Commissioner and therefore it cannot be argued that the Tribunal has without any basis arrived at the conclusion that the activity of the assessee even while employing its personnel abroad and considerable amount of expenditure being incurred for their stay and other things, it was all related to production of onsite computer software and therefore it was a situation which is covered by the activity as envisaged in section 80HHE(1)(i) of the Act.

18. Sri Indrakumar, learned senior counsel appearing for the revenue, in reply, has again drawn our specific attention to the order passed by the Appellate Commissioner and has pointed out to the portion of the order at page 66, wherein it is categorically held by the Appellate Commissioner that the activity of the assessee not being accepted to be as one of export of software, but is only one of providing technical services in connection with the production of computer software etc., and it is for this reason, the Commissioner has also directed exclusion of the expenditure incurred on the personnel employed in connection

with providing such services.

19. Insofar as the provisions of the Act is concerned, the provisions of section 80HHE do provide a benefit to an assessee to the extent of reducing from the taxable income of the assessee, an amount equivalent to the profits from the export of computer software etc., from the total taxable income of the assessee. Two situations are envisaged as indicated in clauses (i) and (ii) to sub-section (1) of section 80HHE of the Act. The computation is as envisaged in sub-section (3) and for the purpose of such computation, while a formula is envisaged in this section one has to understand the phrases export turnover and total turnover, which are the key figures. It is to be found in the Explanation to sub-section (5). The controversy though is mainly in computing these two figures, on a proper understanding of the provisions, we find there is no much difficulty, in the sense, that the amount to be arrived at as export turnover is insofar as the actual export or deemed export of computer software is concerned, and it is the corresponding received by the assessee in convertible foreign exchange as per sub-section (2) to exclude freight charges, telecommunication charges or insurance attributable to delivery of computer software outside India and if it is a situation of receiving amount for providing technical services outside India in connection with development or production of computer software, it is after excluding the expenditure if any incurred in foreign exchange in providing technical services outside India.

20. It is quite clear as to what amount is to be excluded from the amount received by an assessee in the two situations is different. There is no doubt that the expenditure incurred in providing technical services outside India also is a situation, where amount received by the assessee in foreign exchange is referable to the activity of providing technical services outside India not related to the activity of export of compute software. In fact, the Explanation to sub-section (1) of section 80HHE of the Act takes it beyond the pale of any controversy or debate and even if some computer software on site outside India delivered to the customers by the assessee.

21. While this legal position is quite clear, in the present case, we find from the order of the assessing officer that the assessing officer had not as much gone into the claim of the assessee that it is engaged in the business of export of computer software, but thought that the expenses incurred towards maintenance of its technical personnel in the foreign location was only in connection with the rendering of technical services and therefore directed exclusion of the amount of Rs. 3,36,99,093 from computing the export turnover and total turnover in terms of clauses (c) and (e) of Explanation to the section. The appellate authority went into this question in a little more detail, as the assessee in its appeal contended that no part of this amount could have been excluded in arriving at the export turnover. The Appellate Commissioner on examining the activities as revealed by the assessee before it and with only production of a specimen copy of the agreement that it enters into between its foreign collaborators either for sale of

computer software or for providing technical services; opined that the activity is essentially in the nature of providing technical services abroad in connection with the production of computer software. The Appellate Commissioner did give some reasons indicating that transfer of ownership of the software does not take place immediately, but it is only after some time and subject to various other conditions and therefore was not a sale of computer software, in the sense, export of computer software etc.

22. In the further appeal of the assessee before the Appellate Tribunal, what we are clarified by Sri Indrakumar, learned senior counsel appearing for the revenue is that a copy of the agreement with one of the clients of the assessee which had been placed before the Tribunal was an agreement of the year 2002 and submission on behalf of the assessee was that all earlier agreements were also of the same type. The Tribunal proceeded to examine not only a general specimen copy of the agreement, which, it is claimed, had been produced before the Appellate Commissioner, which was also available before the Tribunal but the further agreement of the year 2002, which was placed before the tribunal for the first time by the assessee and based on this, opined that the activity of the assessee should be taken to be only as one attributable to the export of computer software, because of on site development of software as envisaged in the Explanation to sub-section (1) and for which purpose, not only the amendment introduced in the Explanation was relied upon, but also the board circular clarifying the same, and accordingly held that the assessee earned foreign exchange not for providing technical services outside India, but by export of computer software, as envisaged in the Explanation to section 80HHE(1) of the Act.

23. We find that while theoretically speaking, if the activity relates to the first part of sub-section (1) of section 80HHE of the Act, it is one of export of computer software, whether actual or in deemed basis, by an on site development and delivery of software in a foreign location, the provisions of clause (c) of the Explanation to the section does say so, the difficulty we find in answering the questions is that such a finding of the Tribunal is a finding not based on the actual position which the assessee had made good before the Tribunal, either in terms of the actual transaction, which had produced the foreign exchange remittance, or by production of an agreement entered into at the relevant point of time, with its customer from whom remittance/payment had been received in foreign exchange.

24. We find that the Tribunal in proceeding to allow the appeals and to reverse the finding of the Appellate Commissioner, had not really based its finding on any available and relevant material for giving its finding on the question as to whether the activity, related to the first part of sub-section (1) of section 80HHE or second part thereof and in the absence of the same, directing exclusion of the expenses becomes a hypothetical situation for excluding and it is because of this position, we are unable to agree with the view taken by the Tribunal, particularly,

to hold that the deduction as claimed by the assessee u/s 80HHE of the Act should have been allowed without excluding the foreign exchange expenditure incurred by the assessee during the current assessment year.

25. Under the Act, the question arises for each of the assessment year and an answer on any disputed aspect has to be based on the material relevant and available for the accounting period corresponding to the assessment year in question. We are of the view that on an examination of a subsequent general form of agreement and to apply that to all situations irrespective of the factual situation and the activities of the assessee vis-a-vis its foreign collaborator who had remitted the foreign exchange to the assessee, is only a finding on assumption and presumption of a hypothesis. It is not a finding based on the relevant material.

26. In this view of the matter, we have to answer the questions in the negative by holding that the tribunal was not correct in answering the questions in favour of the assessee and against the revenue by reversing the decision of the Appellate Commissioner. But, we think, allowing the matter at this stage will not be doing justice or is fair either to the assessee or to the revenue and particularly so, as the initial authorities were proceeded on the premise that the amount foreign exchange remittance is attributable to the activity in rendering technical services for production of software outside India and the Tribunal took the other view viz., that the activities are in the nature of a deemed export of computer software. The question was only limited to the extent of excluding the expenditure incurred and disallowing the claim of the assessee totally u/s 80HHE of the Act. It is only with regard to the amount of Rs. 3,36,99,093 the dispute as to whether it should be excluded from the export turnover and total turnover was required to be examined and the divergent views between the first two authorities and the Tribunal. We, therefore, think that it would be proper to remand the matter to the assessing officer, as the assessee is required to produce material for the first time and it is only proper that the assessing officer assesses the material afresh. It is open to the assessee to place the materials relevant for the period related to the assessment year in question and the assessing officer to examine the same and to record a finding as to the nature of the activity keeping in view the legal position as we discussed above and answer the question related to exclusion of expenses strictly keeping in view the kind of amounts sought to be excluded in the case of export turnover being attributable to export of computer software, in which event, the exclusion being only freight, telecommunication charges or insurance attributable to the delivery of the computer software outside India and if it is the case of providing technical services outside India in connection with development of computer software, then the actual expenditure, if any, incurred in foreign exchange in providing technical services outside India should be excluded. This legal position equally applies to the other exclusion also and has to be strictly in conformity with the exclusion as provided for in clause (c) and (e) to the Explanation to the section 80HHE of the Act.

27. In the result, we allow these appeals answer the questions against the assessee and in favour of the revenue and the matter is remitted to the assessing officer as stated above. The assessee should appear before the assessing officer on 15-4-2013. The assessing officer to hear the assessee or its representative and complete the matter as expeditiously as possible.

ORDER ON BEING SPOKEN TO

28. These appeals were disposed of by our above common judgment. However, before signing the judgment, we noticed that in ITA No. 2974 of 2005, there were other questions of law also, involving questions other than the question relating to the benefit the assessee can claim u/s 80HHE of the Act and therefore we had directed the registry to list the matter for being spoken to, to hear the learned counsel for the parties further on this aspect.

29. It is submitted by Sri Indra Kumar, learned senior counsel appearing for the revenue and Sri T. Suryanarayan, learned counsel for the assessee, that the above appeals have come up before this Court for examination only on the question relating to the benefit the assessee can claim u/s 80HHE of the Act, in view of the review order passed in Review Petition No. 14 of 2012, ordered on 19-3-2012, which had been considered and order passed along with Review Petition Nos. 15 and 75 of 2012.

30. It is submitted that as per the common judgment dt. 4-11-2011 passed earlier by this Court in ITA Nos. 2972, 2973 and 2974 of 2005, other questions, other than the question relating to the benefit the assessee can claim u/s 80HHE of the Act raised in ITA No. 2973 of 2005 has already been answered and it is submitted that the question relating to deduction of certain amounts towards execution of civil works for repairing the leased premises had been held to be in the nature of revenue expenditure, the question was answered in favour of the assessee and the question relating to the assessee's claim for deduction on payment made to traffic police was held against the assessee, holding that such expenditure cannot be claimed by way of deduction, as it cannot be taken to be as part of the business expenditure and incidental to the carrying on the business of the assessee. In view of this clarification, all questions which had been raised have been answered in these appeals.

31. Insofar as ITA No. 3015 of 2005 is concerned, it is submitted that the only question that arises for examination by this Court in this appeal was the question relating to the benefit the assessee can claim u/s 80HHE of the Act and there was no earlier decision in respect of the questions raised in this appeal. But, being the question as extracted above relating to section 80HHE deduction, the above judgment holds good. With this clarification, we find, all questions raised in the above appeals having been answered and this judgment in the above appeals deals with only the question relating to section 80HHE entitlement and this has been answered as above. Ordered accordingly.