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**(1995) 11 RAJ CK 0016**

**In the Rajasthan High Court**

**Case No : Income Tax Reference No. 9 of 1991**

Commissioner of Income Tax

APPELLANT

Vs

Sun Stone Engineering Industries Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 15-11-1995

**Acts Referred:**

Income Tax Act, 1961 — Section 2(24), 28, 80AB, 80HH

**Citation :** (1996) 220 ITR 182

**Hon'ble Judges :** B.R. Arora, J; B.J. Shethna, J

**Bench :** Division Bench

**Advocate :** Sandeep Bhandawat, for the Appellant; Vineet Kothari, for the Respondent

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## **Judgement**

B.R. Arora, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, at the instance of the Revenue, u/s 256(1) of the Income Tax Act, 1961, has referred the following questions of law for the opinion of this court :

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in directing the Income Tax Officer to allow the deduction u/s 80HH of the Income Tax Act, 1961, without deducting the carry forward losses and investment allowance ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in holding that cash compensatory receipt for export cannot be treated as revenue receipt for taxation ?"

2. The identical question came up for consideration before us in Commissioner of Income Tax Vs. Vishnu Oil and Dal Mills, (D. B. Income Tax Reference No. 1 of 1991 -- decided on November 13, 1995), in which we have answered the first question as follows (page 74) :

" If we read Section 80HH with Section 80AB of the Act then it is very much clear that for the purpose of determination of the relief u/s 80HH of the Act, the gross total income of the assessee has to be worked out after deducting unabsorbed

losses and unabsorbed depreciation and the income eligible for deduction u/s 80HH will be the net income as computed in accordance with the provisions of the Act and not the gross income."

3. The first question is, therefore, answered in favour of the Revenue and against the assessee.

4. So far as question No. (2) is concerned, after the reference made by the Tribunal, the law on the point has been amended and an Explanatory Note on the provisions of the Finance Act, 1990, was issued modifying the provisions relating to exemption of income from export. The Circular No. 572 (see [1990] 186 ITR 81), dated August 3, 1990, issued in this regard reads as under (page 100) :

"Explanatory Notes on the provisions of the Finance Act, 1990 :

Modification of provisions relating to exemption of income from exports.

27, At present exporters are given incentives by way of Cash Compensatory Support (CCS), drawback of duty and import entitlement licences. The taxation of CCS has been a subject-matter of litigation. The Calcutta High Court in the case of Jeewanlal (1929) Ltd. Vs. Commissioner of Income Tax, held that the CCS received by an exporter was a revenue receipt and was subject to Income Tax. The Special Bench of the Income Tax Appellate Tribunal has, however, in a case, distinguished the aforesaid decision and come to the conclusion that the CCS was a capital receipt and hence not subject to tax. The Department's view all along has been that CCS or any other subsidy received by an exporter as an export incentive is a revenue receipt and hence taxable,

27.1 Similarly, the Department's view as regards drawback of duty and profit on sale of import entitlement licences has been that these are revenue receipts and hence liable to tax. There are many court decisions supporting this view.

27.2 To put an end to litigation which may arise regarding the taxability of these incentives received by exporters, new Clauses (iiia), (iiib) and (iiic) have been inserted in Section 28 of the Income Tax Act to provide that profit on sale of import entitlement licences, CCS and drawback of duty respectively shall be chargeable to Income Tax under the head "Profits and gains of business or profession". These have, further, been included in the definition of the term "income" in Clause (24) of Section 2.

27.3 These amendments will take effect retrospectively from the dates from which these incentives were introduced. Thus, amendment with regard to profit on sale of import entitlement licences will apply from 1st April, 1962 ; cash assistance from 1st April, 1967, and drawback of duty from 1st April, 1972, and will, accordingly, apply in relation to the assessment years 1962-63, 1967-68 and 1972-73, respectively, and subsequent years."

5. In view of the amendment made in the taxing provision regarding the taxability of these incentives received by the exporters, new Clauses (iiia), (iiib)

and (iiic) have been inserted in Section 28 of the income tax Act to provide that the profit on sale of import entitlement licences, CCS and drawback of duty, respectively, shall be chargeable to Income Tax under the head "Profits and gains of business or profession". These have, further, been included in the definition of the term "income" in Clause (24) of Section 2, it is not necessary to go into the merits of the case. The law has been amended with retrospective effect from the dates from which these incentives were introduced. In view of the amended provisions of Section 28 of the Act relating to exemption of income from exports (item No. 27.2 above) this question is, also, answered in favour of the Revenue and against the assessee.

6. In the result, the reference is answered in favour of the Revenue and against the assessee.