IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT
&
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER,

I.T.A. Nos.521& 522/Ahd/2023
(Assessment Years: 2000-2001 & 2002-2003)

Inox India Limited, 9th Floor, KP Platina, Racecourse, Vadodara-390007.	Vs.	Deputy Commissioner of Income Tax, Circle-1, (Now Circle-1(1)(1)) Vadodara.
[PAN No.AAACI4416P]		

And

I.T.A. Nos.523 & 524/Ahd/2023
(Assessment Years: 2003-2004 & 2004-2005)

Inox India Limited, 9th Floor, KP Platina, Racecourse, Vadodara-390007.	Vs.	Assistant Commissioner of Income Tax, Circle-1(2), (Now Circle-1(1)(1)) Vadodara.
[PAN No.AAACI4416P]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Milin Mehta, A.R.
Respondent by:	Shri Waghe Prasad Rao, Sr. DR

Date of Hearing	16.10.2024
Date of Pronouncement	12.11.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These four appeals are filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), for the Assessment Years

2000-2001, 2002-2003, 2003-2004 & 2004-2005. Since common issues are involved in all the year under consideration of appeals before us, the same are being disposed of by way of this common order.

ITA No.521/Ahd/2023 for AY 2000- 2001

2. The Assessee has taken the following grounds of appeal:-

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Invalid Proceedings:

1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] erred in fact and in law in passing an order beyond its jurisdiction.

2. The learned CIT(A) erred in fact and in law in invoking provisions of section 251(2) of the Act and enhancing the scope of set aside proceedings.

3. The learned CIT(A) erred in fact and in law in restricting the deduction u/s 80HHC and 801A of the Act by invoking provisions of section 801A(9) despite the fact that no such directions were given by Hon'ble Income Tax Appellate Tribunal, Ahmedabad ("ITAT").

Non-applicability of section 251;

4 The learned CIT(A) erred in fact and in law in invoking section 251 of the Act without satisfying the conditions provided under the Act.

5. The learned CIT(A) erred in fact and in law in enhancing the scope of proceedings without appreciating the provisions of the Act in proper perspective.

Without prejudice to the above:

6. The learned CIT(A) erred in fact and in law in restricting the deduction u/s 80HHC by invoking the provision of section 801A(9) of the Act without appreciating the facts on record in proper perspective.
7. The learned CIT(A) erred in fact and in law in disallowing the deduction of lease rent income of Rs. 1,07,74,556 u/s 80HHC of the Act despite the fact that the issue of applicability of provisions of section 801A(9) is already adjudicated by the higher authority.

8. The learned CIT(A) erred in fact and in law in invoking provisions of section 801A(9) of the Act without appreciating the provisions of the law in proper perspective.

Disallowance u/s 801HHC:

9 The learned CIT(A) erred in fact and in law in disallowing the deduction claimed u/s 80HHC of the Act on lease rent income.

10. The learned CIT(A) erred in fact and in law in disallowing deduction u/s 80HHC without granting proper opportunity of being heard.

11. Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeals.

ITA No.522/Ahd/2023 for AY 2002- 2003

3. The Assessee has taken the following grounds of appeal:-

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Invalid Proceedings:

1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] erred in fact and in law in passing an order beyond its jurisdiction.

2. The learned CIT(A) erred in fact and in law in invoking provisions of section 251(2) of the Act and enhancing the scope of set aside proceedings.

3. The learned CIT(A) erred in fact and in law in restricting the deduction u/s 80HHC of the Act by invoking provisions of section 801A(9) despite the fact that no such directions were given by Hon'ble Income Tax Appellate Tribunal, Alunedabad ("ITAT").

Non-applicability of section 251;

4. The learned CIT(A) erred in fact and in law in invoking section 251 of the Act without satisfying the conditions provided under the Act.

5. The learned CIT(A) erred in fact and in law in enhancing the scope of proceedings without appreciating the provisions of the Act in proper perspective.

Without prejudice to the above:

6. The learned CIT(A) erred in fact and in law in restricting the deduction u/s 80HHC by invoking the provision of section 801A(9) of the Act without appreciating the facts on record in proper perspective.

7. The learned CIT(A) erred in fact and in law in disallowing the deduction of lease rent income of Rs. 84,51,958 u/s 80HHC of the Act despite the fact that the issue of applicability of provisions of section 801A(9) is already adjudicated by the higher authority.

8. The learned CIT(A) erred in fact and in law in invoking provisions of section 801A(9) of the Act without appreciating the provisions of the law in proper perspective.

Disallowance u/s 80HHC:

9. The learned CIT(A) erred in fact and in law in disallowing the deduction claimed u/s 80HHC of the Act on lease rent income.

10. The learned CIT(A) erred in fact and in law in disallowing deduction u/s 80HHC without granting proper opportunity of being heard.

11. Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeals.

ITA No.523/Ahd/2023 for AY 2003- 2004

4. The Assessee has taken the following grounds of appeal:-

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Invalid Proceedings:

1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] erred in fact and in law in passing an order beyond its jurisdiction.

2 The learned CIT(A) erred in fact and in law in enhancing the scope of set aside proceedings without granting proper opportunity of being heard to the Appellant.

3. The learned CIT(A) erred in fact and in law in restricting the deduction u/s 80HHC of the Act by invoking provisions of section 801A(9) despite the fact that no such directions were given by Hon'ble Income Tax Appellate Tribunal, Ahmedabad ("ITAT").

4. The learned CIT(A) erred in fact and in law in invoking provisions of section 801A(9) despite the fact that the Appellant has not claimed deduction u/s 801A of the Act.

Without prejudice to the above:

Non-applicability of section 251:

5. The learned CIT(A) erred in fact and in law in invoking section 251 of the Act without satisfying the conditions provided under the Act.

6. The learned CIT(A) erred in fact and in law in enhancing the scope of proceedings without appreciating the provisions of the Act in proper perspective.

7 The learned CIT(A) erred in fact and in law in disallowing the deduction u/s 80HHC on lease rent income of Rs. 54,66,866 by invoking the provision of section 801A(9) of the Act despite the fact that no deduction u/s. 801A was claimed by the Appellant.

Disallowance u/s 80HHC:

8. The learned CIT(A) erred in fact and in law in disallowing the deduction claimed u/s 80HHC of the Act on lease rent income.

9. The learned CTT(A) erred in fact and in law in disallowing deduction u/s 80HHC without granting proper opportunity of being heard.

10. Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeals.

ITA No.524/Ahd/2023 for AY 2004- 2005

5. The Assessee has taken the following grounds of appeal:-

All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.

Invalid Proceedings:

1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] erred in fact and in law in passing an order beyond its jurisdiction.

2. The learned CIT(A) erred in fact and in law in enhancing the scope of set aside proceedings without granting proper opportunity of being heard to the Appellant.

3. The learned CIT(A) erred in fact and in law in invoking provisions of section 801A(9) despite the fact that the Appellant has not claimed deduction u/s 801A of the Act.

4. The learned CIT(A) erred in fact and in law in restricting the deduction u's 80HHC of the Act by invoking provisions of section 801A(9) despite the fact that no such directions were given by Hon'ble Income Tax Appellate Tribunal, Ahmedabad ("ITAT").

Without prejudice to the above

Non-applicability of section 251:

5. The learned CIT(A) erred in fact and in law in invoking section 251 of the Act without satisfying the conditions provided under the Act.

6 The learned CIT(A) erred in fact and in law in enhancing the scope of proceedings without appreciating the provisions of the Act in proper perspective.

7 The learned CIT(A) erred in fact and in law in disallowing the deduction u/s 80HHC on lease rent income of Rs. 52,30,180 by invoking the provision of section 801A(9) of the Act without appreciating the facts on record in proper perspective.

Disallowance u/s 80HHC:

8 The learned CIT(A) erred in fact and in law in disallowing the deduction claimed u/s 80HHC of the Act on lease rent income.

9. The learned CIT(A) erred in fact and in law in disallowing deduction u/s 80HHC without granting proper opportunity of being heard.

10. Your appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeals.

6. The brief facts of the case are that the assessee is engaged in manufacturing of vacuum insulated tanks and related products. During the relevant assessment years, the applicant sought deduction under sections 80HHC and 80-IA of the Act. The Assessing Officer scrutinized the case under section 143(3) of the Act and recalculated the allowable deductions. The AO added excise duty and sales tax to the total turnover while excluding lease rent and other incomes, categorizing them as "Income from Other Sources" rather

than "Business Income". Ld. CIT(Appeals), after reviewing the submissions and pertinent judgments observed that the matter revolved around whether lease rent income from products manufactured by the applicant qualified for deductions under section 80IA of the Act. Ld. CIT(Appeals) held that the direct connection between the lease rent income and the assessee's business activities was affirmed. Therefore, while the lease rent was deemed business income and eligible for deduction under section 80IA of the Act. Ld. CIT(Appeals) was of the view that lease rent could not be simultaneously counted in the computation of deduction under section 80HHC of the Act due to provisions in section 80IA(9) of the Act. Thus, the appeal of the assessee was partly allowed by Ld. CIT(Appeals), holding that the lease rent income should not factor into the 80HHC deduction calculation. While passing the order, Ld. CIT(Appeals) made the following observations**:**

> *2.7 I have gone through the submission of the assessee, the judgment order of the Hon'ble Gujarat High court, the assessment order and the order dated 25.10.2016 of the Hon'ble Tribunal.*
>
> *2.8 The issue before me is that whether the lease rent income from leasing out products manufactured by the assessee is eligible for 801A deduction or not. It has been explained by the assessee that source of lease rent income is the product manufactured by the assessee. There appears to be direct connection between the product manufactured by the assessee and the income receipt. The nature of lease rent income, falls under the head income from business and profession. Letting out vacuum tanks was the regular business activity of the assessee.*
>
> *2.9 As the lease rent income has direct nexus with the business of the assessee. I am of the opinion that the lease rent income received by the assessee by leasing the balance stock of vacuum tanks is directly connected with the business activity of the assessee and hence eligible for deduction under section 801A.considering the same lease rent income for computation of deduction under section 80 HHC is not correct in view of the provisions under section 801A (9). Hence no relief on the issue of computation of 80HHC deduction with respect to lease rent income is allowed.*

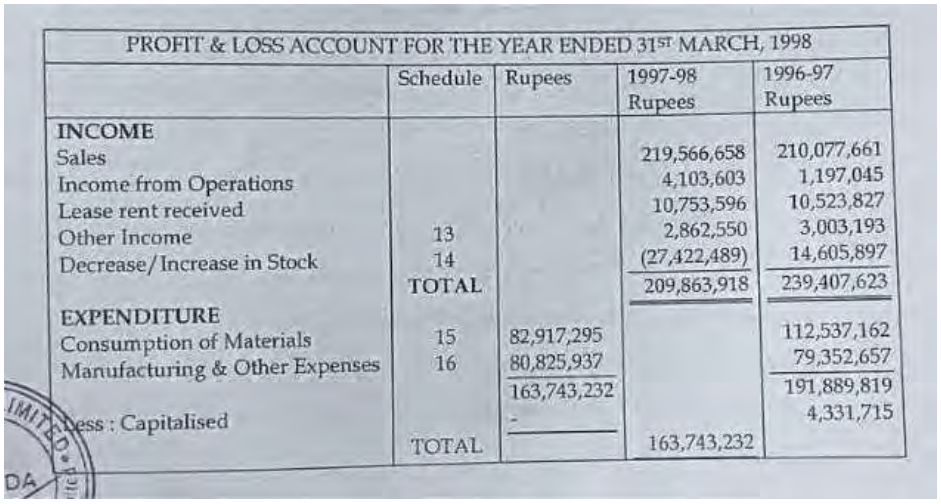
3. The appeal is thus partly allowed.

7. Before us, the counsel for the assessee submitted that only two issues are involved in all the appeals before us.

8. The first-issue-is-whether income from "lease rental" is eligible for deduction under section 80HHC of the Act. The counsel for the assessee submitted that this issue has been conclusively decided by the Tribunal in assessee's own case in ITA number 756 of 2001 and others for assessment years 1997-98 to 1999- 2000 which has allowed deduction under section 80 HHC to the assessee on “lease rental” income on the ground that lease rental income is emanating out of goods manufactured by the assessee and therefore should be considered as derived from "business activity". It would be useful to reproduce the relevant extracts of the ruling for ready reference.

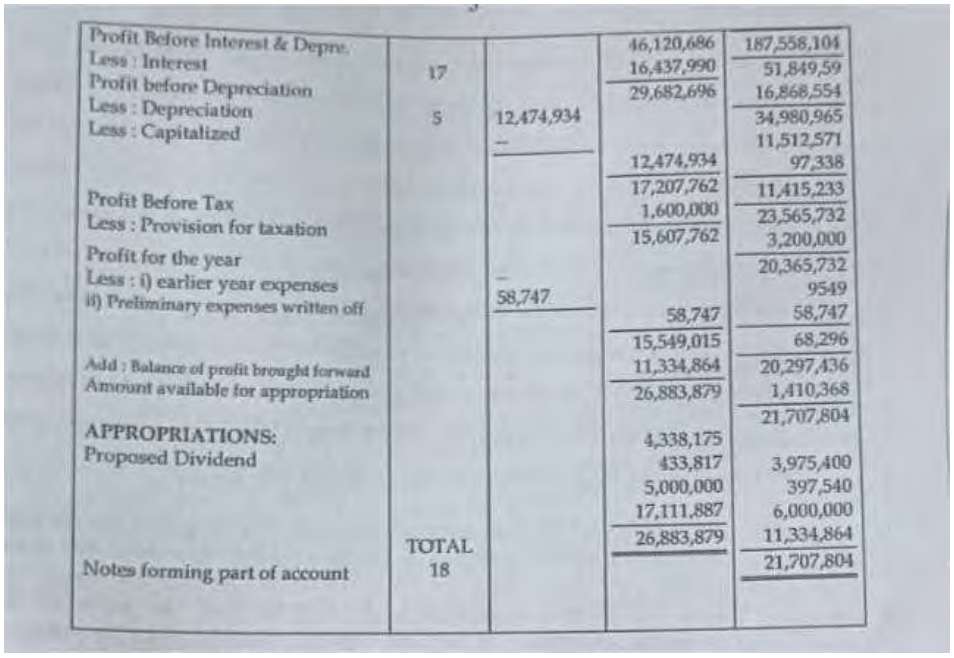
4. Pursuant to the directions of the Hon'ble High Court as mentioned hereinabove, we have heard the rival contentions at length and have carefully perused the orders of the authorities below. The assessee- company is engaged in manufacturing of Vacuum Insulated Tanks. The products manufactured were sold in the domestic market as well as overseas market. Thus, the assessee was eligible for claiming deduction u/s. 80HHC and 80-1 of the Act. The short issue before us is to decide whether lease rental income received by the assessee should be excluded for the computation of deduction u/s 80HHC and whether the lease rental income can be considered as being derived from the industrial undertaking. As mentioned elsewhere, the assessee is manufacturing Vacuum Insulated Tanks which are sold. During the years under consideration, the manufactured goods which could not be sold were leased out. Thus, leasing becomes the integral part of the business activity of the assessee- company. There is a direct nexus between the goods manufactured by the assessee and the goods leased out. It is not the case of the Revenue that the assessee has purchased goods from outside and such goods are leased out. The leased out goods are manufactured by the assessee-company itself. Therefore, in our understanding of the facts qua the provisions of Section 80HHC of the Act, Explanation (baa) to Section 80HHC will not be attractive. For the reasons mentioned hereinabove, it can be safely concluded that the lease rental income can be said to be "derived from" the business activity of the assessee.

5. At this stage, let us see the Profit and Loss Account of the assessee- company for the year ended 31.03.1998 and the same reads as under:-



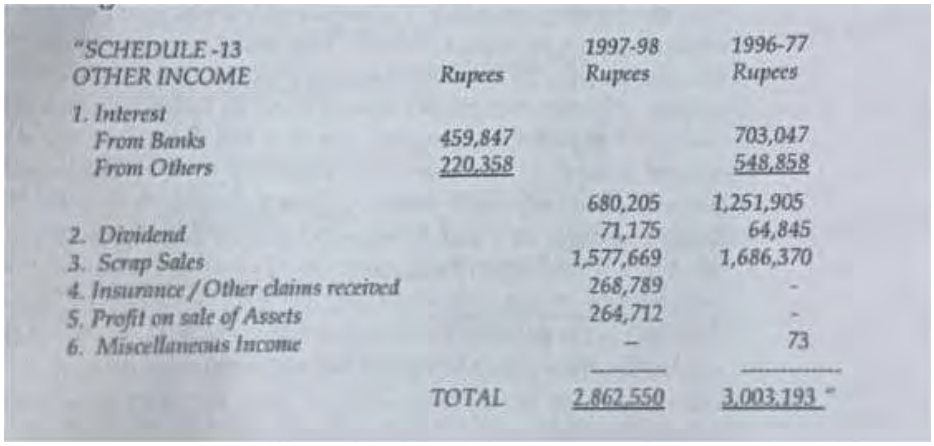
PROFIT & LOSS ACCOUNT FOR THE YEAR ENDED 31ST MARCH, 1998

	Schedule	Rupees	1997-98 Rupees	1996-97 Rupees
INCOME				
Sales			219,566,658	210,077,661
Income from Operations			4,103,603	1,197,045
Lease rent received			10,753,596	10,523,827
Other Income	13		2,862,550	3,003,193
Decrease/Increase in Stock	14		(27,422,489)	14,605,897
	TOTAL		209,863,918	239,407,623
EXPENDITURE				
Consumption of Materials	15	82,917,295		112,537,162
Manufacturing & Other Expenses	16	80,825,937		79,352,657
		163,743,232		191,889,819
Less : Capitalised		-		4,331,715
	TOTAL		163,743,232	



Profit Before Interest & Depre.			46,120,686	187,558,104
Less : Interest	17		16,437,990	51,849,59
Profit before Depreciation			29,682,696	16,868,554
Less : Depreciation	5	12,474,934		34,980,965
Less : Capitalized		–		11,512,571
			12,474,934	97,338
			17,207,762	11,415,233
Profit Before Tax			1,600,000	23,565,732
Less : Provision for taxation			15,607,762	3,200,000
Profit for the year				20,365,732
Less : i) earlier year expenses		–		9549
ii) Preliminary expenses written off		58,747	58,747	58,747
			15,549,015	68,296
Add : Balance of profit brought forward			11,334,864	20,297,436
Amount available for appropriation			26,883,879	1,410,368
				21,707,804
APPROPRIATIONS:			4,338,175	
Proposed Dividend			433,817	3,975,400
			5,000,000	397,540
			17,111,887	6,000,000
			26,883,879	11,334,864
	TOTAL			21,707,804
Notes forming part of account	18			

6. A Perusal of the above shows that lease rent received has been shown as part of the business income and the other income includes the following items:



"SCHEDULE -13 OTHER INCOME	Rupees	1997-98 Rupees	1996-77 Rupees
1. Interest			
From Banks	459,847		703,047
From Others	220,358		548,858
		680,205	1,251,905
2. Dividend		71,175	64,845
3. Scrap Sales		1,577,669	1,686,370
4. Insurance / Other claims received		268,789	-
5. Profit on sale of Assets		264,712	-
6. Miscellaneous Income		–	73
	TOTAL	2,862,550	3,003,193 "

7. A Perusal of the computation of the total income shows that the assessee has taken profit at Rs.15,549,015/- which is the same as shown in the Profit & Loss Account mentioned hereinabove as "Profit Before Tax". Thus, it can be seen that the gross total income of the assessee includes profits and gains derived from the industrial undertaking. ***We find that the gross total income of the assessee included lease rent. The Assessing Officer has also taken the same under the head "Profits & Gains of Business". In our understanding of the facts, the same item of receipt cannot be treated differently, i.e., once while computing the gross total income and secondly, at the time of computing deduction u/s 80-1 of the Act. An identical issue was considered by the Hon'ble High Court of Gujarat in the case of Nirma Industries Ltd vs. DCIT, reported in (2995) 283 ITR 402 (Guj.)****, wherein inter alia the Hon'ble High Court was seized with the following question:-*

> *"2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that while computing deduction under s. 80-1 of the IT Act, 1961, interest received from trade debtors towards late payment of sales consideration is required to be excluded from the profits of the industrial undertaking as the same cannot be stated to have been derived from the business of the industrial undertaking?"*

8. And, the Hon'ble High Court has held as under:-

> *"27. Insofar as question No. 2 is concerned, according to the Tribunal s. 80-1 of the Act uses the phrase 'derived from' and hence the interest received by the assessee from its trade debtors cannot be taken into consideration for the purpose of computing profits derived from an industrial undertaking. The Tribunal has failed to appreciate that it is not the case of the AO that the interest income is not assessable under the head 'Profits and gains of business'. It is only while computing relief under s. 80-1 of the Act that the Revenue changes its stand. When one reads the opening portion of s. 80-1 of the Act it is clear that words used are: "gross total income of an assessee includes any profits and gains derived from an industrial undertaking". Once this is the position then, in computing the total income of the assessee, a deduction from*

> *such profits and gains of an amount equal to the prescribed percentage is to be allowed. That, in fact, the gross total income of the assessee included profits and gains from such business, and this is apparent on a plain glance at the computation in the assessment order. Both in relation to Vatva Unit and Mandali Unit the computation commences by taking profit as per statement of income filed along with return of income. Therefore, the same item of receipt cannot be treated differently: once while computing the gross total income, and secondly at the time of computing deduction under s. 80-1 of the Act. Therefore, on this limited count alone, the order of the Tribunal suffers from a basic fallacy resulting in an error in latw and on facts. The Tribunal instead of recording findings on facts proceeded to discuss law. This litigation could have been avoided if the parties had invited attention to basic facts."*

9. A similar view was taken by the Hon'ble High Court of Bombay in the case of CIT vs. International Data Management Ltd, reported in (2003) 261 ITR 177 (Bom). The relevant finding of the Hon'ble High Court reads as under:-

> *"As regards deduction in respect of income from service charges, maintenance revenue and lease rent, there was a direct nexus between these receipts and the main business activity of the assessee. This was a finding of fact also recorded by the Tribunal. There was no reason to interfere with this finding of fact. Accordingly, assessee's income from service charges, maintenance revenue and lease rent could not be treated as income derived from industrial undertaking within the meaning of section 80-1."*

10. Considering the business activities of the assessee qua the lease rental income in the light of the aforementioned findings of the Hon'ble High Courts, we decline to interfere with the findings of the CIT(A) for AY 1997- 98, 1998-99 and 1999-2000. All these appeals by the Revenue are accordingly dismissed and for similar reasons, findings of the CIT(A) for AY 1999-2000 are set aside. The appeal filed by the assessee is allowed.

11. In the result, all the appeals filed by the Revenue are dismissed and the appeal filed by the assessee is allowed.

9. The second issue brought to our notice by the Counsel for the assessee before us was that Ld. CIT(Appeals) had disallowed the deduction under section 80HHC on the ground that on the same lease rental income, deduction under section 80IA has been allowed to the assessee and therefore in view of the section 80IA(9), deduction under section 80HHC of the Act is not allowable to the assessee The counsel for the assessee relied on the case of ACIT v. IPCA Laboratories 112 Taxman.com 332 (SC) in support of the proposition that

deduction under section 80HHC of the Act is available to the assessee without excluding deduction under section 80IA of the Act. The counsel for the assessee also relied on several other decisions on the this issue, as well.

10. In response, Ld. DR placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

11. We have heard the rival contentions and perused the material on record. Regarding the issue of availability of deduction under Section 80HHC of the Act with respect to "lease rental", in view of the decision referred to by the Counsel for the assessee in assessee's own case in ITA No.756 of 2000 for assessment year 1997-98 to 1999-2000, in our view, the issue now stands decided in favour of the assessee and the assessee is eligible for deduction under Section 80HHC of the Act on "lease rental" income.

12. With regard to the second issue of simultaneous claim of deduction under Section 80HHC of the Act and Section 80IA of the Act, we are of the considered view that the decision cited by the assessee would not be of assistance on this issue since division bench of Supreme Court referred this matter to larger bench as there was difference of opinion as to whether assessee could claim simultaneous deductions under section 80-IA/ 80-IB and 80HHC on same profits in the case of **Micro Labs Ltd. 64 taxmann.com 199 (SC).** While dealing with similar issue, the ITAT Ahmedabad Bench in the case of **Madhusudhan Industries ITA No.638/Ahd/2012** has observed as under:

> *2. The ld.DR filed an application seeking adjournment on the ground that he would be unable to attend the hearing since he had been called for a*

briefing meeting by Election Commission of India. The said adjournment application was placed before us. At this juncture, ld.Senior Counsel, Shri S.N. Soparkar, appearing for the assessee stated before us that as far the assesses appeal is concerned ***the same is liable to be dismissed since the issue raised in the appeal stands decided against the assessee covered by the decision of the jurisdictional High Court in the matter****. He pointed out that the issue arising in the assessee's appeal related to simultaneous claim of deduction of profits of business of the assessee under section 80IA and 80HHC of the Act, whether the deduction under section 80HHC of the Act is tobe allowed on the net profits remaining after the claim of deduction under section 80IA of the Act.*

3. ***He pointed out that this issue had been referred to a Larger Bench of the Supreme Court in view of divergent views of the Hon'ble Judges in the case of ACIT Vs. M/s.Micro Labs Ltd. reported in 380 ITR 1 (SC).That pending disposal of this reference the present appeals were being adjourned time and again; that now this reference to the Larger Bench had been disposed of as dismissed.*** *The ld.counsel for the assessee stated, therefore, that the issue had to be adjudicated in the light of the prevailing judgments of Hon'ble High Courts. He pointed out that the jurisdictional High Court had decided the issue against the case in the case of CIT Vs. Atul Intermediates, 45 taxmann.com 275 (Guj), and therefore, he ITA No.638 & 697/Ahd/2012 conceded that the assessee's appeal was without any merits, and needed to be dismissed.*

……..

6. As is evident from the above, the solitary issue raised in the present appeal relates to the claim of deduction under section 80HHC of the Act;

whether to be computed on the residual profits remaining after allowing deduction under section 80IA of the Act in terms of section 80IA(9) of the Act. ***Since the ld.counsel for the assessee has fairly conceded that the reference to the Larger Bench of the Supreme Court on this issue in the case of Micro Lab (supra) has been dismissed on 17.9.2018 in CA No.007427/2012 and Hon'ble jurisdictional High Court has decided the issue against the assessee in the case of Atul Intermediates (supra), the grounds raised by the assessee merits no consideration and are dismissed.***

12.1 In the case of **PCIT v. E.I.H. Ltd 103 taxmann.com 204 (SC),** Supreme Court held that where in respect of issue as to double deduction under chapter VIA of Act, High Court disposed of Revenue's appeal by directing Assessing officer to pass order in accordance with judgment of Supreme Court as may be rendered on reference pursuant to judgment reported in Asstt. CIT v. MicroLabs Ltd. [2015] 64 taxmann.com 199/[2016] 237 Taxman 74 (SC), SLP filed against decision of High Court was to be allowed.

12.2 Further, in several decisions rendered by jurisdictional Gujarat High Court, the issue has been decided against the assessee.

12.3 In the case of **Sun Pharmaceutical Industries Ltd. 75 taxmann.com 143 (Gujarat)**, the High Court held that provisions of section 80IA(9) have to be applied while considering assessee's claim for

deduction under section 80HHC. While passing the order the Gujarat High Court held as under:

> ***6.*** *This leaves us with the sole surviving question of deduction under Section 80HHC to be worked out without giving effect to the provision of Section 80IA(9) of the Act. Admitted facts are that on identical issue, this Court has in case of CIT v. Atul Intermediates [2015] 373 ITR 638/[2014] 45taxmann.com 275/223 Taxman 203 (Mag.) held that nothing contained in Section 80HHC suggests that the deduction provided therein was immune from any outside influence that the provision was impregnable by any other statute or enactment. Accepting any such theory would lead to incongruous results. It was held that the provision of sub section (9) of Section 80IA would have to be applied while considering the assessee's claim for deduction under Section 80HHC of the Act. Thus, the issue was decided against the assessee. Ordinarily, therefore, we would reject such a question without any further discussion. Learned counsel for the assessee, however, pointed out that different High Courts have taken different views on the topic. The Supreme Court has granted SLP and is in seizin of the controversy. Learned Judges of the Bench, who heard the appeals, were divided in their opinion each passing reasoned order. In view of this disagreement, the issue is now referred to the larger bench. These orders are reported in case of Asstt. CIT v. Micro Labs Ltd. [2016] 380 ITR 1/237 Taxman 74/[2015] 64 taxmann.com 199*

(SC). Learned counsel for the assessee, therefore, submitted that these questions may also be kept pending or, at any rate, be allowed to be re-agitated. If by the time this appeal is taken up for hearing, the decision of the Supreme Court is available.

***7.** In view of the binding judgement of this Court which squarely covers the issue, we are unable to accept either of the two suggestions. Today, insofar as this Court is concerned, the question is governed by the decision in case of Atul Intermediates (supra).In absence of any extraordinary reasons, we are duty bound to follow the judgement. Such question is, therefore, rejected.*

12.4 In the case of **Atul Intermediates 45 taxmann.com275 (Gujarat),** the High Court held that if an assessee has claimed deduction of profit or gains under section 80-IB, deduction to that extent is not to be allowed under section 80HHC of the Act. While passing the order, High Court made the following observations:

- *In plain terms, section 80-IA(9) provides that where any amount of profits and gains of an undertaking or enterprise in case of an assessee is claimed and allowed under section 80-IA, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading C. - 'Deductions in respect of certain incomes', and in no case exceed the profits or gains of such eligible business of the undertaking or enterprise. It can thus be seen that sub-section (9) is divided into two clear parts. First part pertains to non-allowability of deduction under any other provision contained in Part-C*

of Chapter VI to the extent of profits and gains of an enterprise or undertaking with respect to which deduction under section 80-IA is claimed and allowed. The second part provides that in any case, such deduction shall not exceed the profits and gains of eligible business of an undertaking or enterprise. If the interpretation of the assessee that only effect of sub-section (9) of section 80-IA would be to limit the maximum permissible deduction under section 80HHC to the profits and gains of the eligible business is accepted, it would amount to completely ignoring the first part of the sub-section. In other words, the earlier part of sub-section would be rendered completely redundant, purposeless and otiose. It is well settled that the Legislature cannot be expected to have used words and expressions, which have no meaning or effect. Limiting the scope of application of sub-section (9) of section 80-IA only to restricting the claim of deduction under section 80HHC or for that matter under the provisions of sub-chapter C to Chapter VI would amount to giving no effect to the earlier portion of the sub-section, which specifically provides for making a disallowance of deduction claimed by the assessee under various provisions contained in sub-chapter C which has already been claimed and allowed under section 80-IA. [Para 24]

- *Therefore, sub-section (9) of section 80-IA has two implications. First part would operate as to denying an assessee's claim of deduction under other provisions of sub-chapter C of Chapter VI when a certain profit or gain has already been granted deduction under section 80-IA. Under such situation, to the extent specified in first part of sub-section (9), the assessee's claim of deduction under other provisions, including section 80HHC, would be restricted. Second implication of sub-section (9) of*

section 80-IA is that under no circumstances, once deduction has been granted under section 80-IA, deduction under any other provision combined together would exceed the total amount of profits and gains of eligible business of an undertaking or enterprise. This much is plain, and requires neither any imagination nor any interpretative process. Any other view would amount to obliterating the first part of sub-section (9) of section 80-IA, and would, thus, be wholly impermissible to do. If the sole intention of the Legislature was to limit various deductions to the maximum limit of the profit of the eligible business, why was such long and somewhat complex expression was used in sub-section (9) of section 80-IA? The same purpose could have been easily achieved by far briefer and more simple expression of providing maximum limit of deduction, for example, as was done in sub-section (2) of section 80A. Therefore, the theory that the Legislature has in far more complex and detailed expression desired to bring about the same result, though in plain terms, when the sub-section read as a whole, conveys entirely different connotation could not be accepted. [Para 24]

- *In plain terms when read as a whole sub-section (9) of section 80-IA does not limit its effect only to disallowing deduction over and above the profit or gain of an enterprise or undertaking. Second aspect is that such provision does not have a non obstante clause. What would be the effect of these two forces emerging from sub-section (9) of section 80-IA needs to be appreciated. The combined effect of these two factors would be that sub-section (9) of section 80-IA would operate as long as there is nothing contrary contained in any other provisions of sub chapter C of Chapter VI. Thus, if there is any indication of legislative intent to allow the full*

deduction under section 80HHC irrespective of the provision contained in sub-section (9) of section 80-IA, such legislative intent must prevail. On the other hand, if one find that section 80HHC is not immune to outside influence, full play of the provision of sub-section (9) of section 80-IA must be allowed, even if it means restricting the claim of an assessee for deduction under section 80HHC. In other words, merely because sub-section (9) of section 80-IA does not contain non-obstante clause, it would not by itself mean that it can have no effect on the deduction under section 80HHC. As is well known, the Legislature uses the non obstante clause typically using expression 'notwithstanding anything contained in any other provision, Act or law for the time being in force'. Ordinarily, such expression would be equivalent to saying that in spite of the provision of the Act mentioned in non-obstante clause, the enactment following any such provision have full operation. Thus, often times, non obstante clause is used to override other statutory provisions specified in such a section in specified circumstances. It can thus be seen that a provision containing non obstante clause would prevail irrespective of anything contrary contained in any other provision referred to in such non obstante clause. This, however, could not mean that in absence of a non obstante clause, even if there is no conflict between the two statutory provisions, the provision restricting the ambit of a benefit must yield in absence of such non obstante expression. [Para 25]

- *Sub-section (9) of section 80-IA was aimed at restricting the successive claims of deduction of the same profit or gain under different provisions contained in sub-chapter C of Chapter VI of the Act. This provision,*

therefore, necessarily impacts other deduction provisions including section 80HHC. Nothing contained in section 80HHC suggests that the deduction provided therein was immune from any outside influence or that the provision was impregnable by any other statute or enactment. Accepting any such theory would lead to incongruous results. Even the assessee concedes that sub-section (9) of section 80-IA would operate as to limiting the combined deductions to a maximum of the profits and gains from an eligible business of the undertaking or enterprise. If section 80HHC contained a protective shell making it immune from any outside influence, even this effect of sub-section (9) of section 80-IA could not be applied. This would completely render the provisions of sub-section (9) of section 80-IA redundant and meaningless. [Para 27]

- *It is true that in different provisions the Legislature has used different language for restricting or limiting the claim of deductions. The use of language in statutory provisions in such complex situations must be peculiar to every situation the Legislature may seek to meet with. Merely because in some of the provisions certain disallowances are expressed in different language, it would not by itself mean that sub-section (9) of section 80-IA was aimed to have restricted and limited scope of application. [Para 28]*

- *The contention that no such matching provision was made in section 80HHC would clearly indicate the Legislative intent also, is not a valid argument. Sub-section (9) of section 80-IA was enacted to have universal application to all deductions under sub-chapter C of Chapter VI. It was*

neither possible nor expected of the Legislature to make individual matching provisions in large number of statutory provisions recognizing deductions under various situations. Such provisions are often times made for a limited period, new deductions are introduced from time to time and old deductions withdrawn. [Para 29]

- *Reference to the **circular No. 772 of 23-12-1998** also would not resolve this controversy. In the said circular, it is merely amplified that it was noticed that certain assessees claimed more than hundred per cent deduction of profits and gains of same undertaking, where they were entitled for deduction under more sections than one. It was, therefore, to prevent the taxpayers from taking undue advantage of the existing provisions of claiming repeated deductions in respect of the same amount of eligible income, even in cases where it exceeds such eligible profits, that inbuilt restrictions under section 80HHC and section 80-IA have been provided. This explanation nowhere restricts the scope of sub-section (9) of section 80-IA. It only provides that the provision was made because under the existing provisions the assessees were claiming double deductions, and in some cases such deduction would exceed hundred per cent of the profits and gains of the same undertaking. The clarification does not provide that sub-section (9) would apply and operate only when such claim exceeds the profits and gains of the undertaking. [Para 30]*

- *This interpretation, would not be disturbed by reference to section 80AB. The said section only provides that while computing a deduction under any other provisions contained in sub-chapter C of Chapter VI in respect of any income specified in such section, notwithstanding anything*

contained in that section, for the purpose of computing deduction, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature, which is derived or received by the assessee, and which is included in his gross total income. The non obstante expression used in this section is notwithstanding contained in 'that section' namely, the section under which the claim of deduction is to be examined. By no means this provision of expression' notwithstanding anything contained in that section' can be used to interpret that section 80HHC can have no effect of sub-section (9) of section 80-IA. As noted earlier, if this were so, the second part of sub-section (9) limiting the total deductions to the profit and gain from the eligible business also could not be applied. [Para 32]

- *The question is answered in favour of the Revenue.*

12.5 Further, there is also another direct decision rendered in the case of **Shah Alloys Ltd 48 taxmann.com 51 (Gujarat)**, where the jurisdictional Gujarat High Court held that when a certain profit or gain has already been granted deduction undersection 80-IA to extent specified in first part of sub-section (9) of section 80-IA assessee's claim of deduction under other provisions, including section 80HHC, would be restricted.

12.6 Accordingly, in view of the above discussion, we are of the view that when a certain profit or gain has already been granted deduction under section 80-IA, to extent specified in first part of sub-section (9) of section 80-IA, claim of deduction under other provisions, including section

80HHC of the Act, would not be available for "lease rental" income in view of Section 80IA(9) of the Act. This also finds support from a concurrent reading of the orders of Ahmedabad Tribunal in the case of Madhusudhan Industries *supra*, the decision of Supreme Court in the case of E.I.H. Ltd. *supra* and various Gujarat High Court decisions referred to above, on this issue. Accordingly, on this issue, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

13. In the result, the appeal of the assessee is partly allowed for assessment year 2000-2001 and other years before us, on the above two issues which were argued before us.

This Order pronounced in Open Court on 12/11/2024

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad; Dated 12/11/2024
Manish/Tanmay, Sr. PS ***TRUE COPY***
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad