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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
29.
\+ **W.P.(C) 6963/2007**

M/S I.P.INTERNATIONAL EXPORTS INDIA ..... Petitioner
Through: Ms. Prerna Goswamy, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents
Through: Mr.Anurag Ahluwalia, CGSC with Mr. Vaibhav Verma, Advocate for R-1.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **25.07.2016**

CM No. 25954 of 2016 (early hearing)

1. For the reasons stated therein, the application is allowed. The writ petition is taken up for final hearing.

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2. Ms. Prerna Goswamy, learned counsel for the Petitioner, points out that the challenge in this petition is to the retrospective amendment in Section 80 HHC(3) of the Income Tax Act, 1961 ('Act') by the Taxation Laws (Second Amendment) Act, 2005 with effect from 31st October, 2005. It is pointed out that petitions involving a similar issue were heard by the Gujarat High Court and were decided in favour of the Assessees in ***Avani Exports v. Commissioner of Income Tax (2012) 348 ITR 391***.

3. The Revenue's appeals against the aforementioned judgement of the Gujarat High Court were disposed of by the Supreme Court by the judgement dated 30th March, 2015 in SLP(C) No. 9273/2013 (***CIT-5 v. Avani Exports***). The Supreme Court modified the operative conclusions of the Gujarat High Court as under:

> "The High Court vide impugned judgement has decided the issue in favour of the writ petitioners by concluding as under:
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> > "26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and earlier granted to a class of the assessees whose assessments were still pending although such benefit will be available t o the assessees whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a fewer section of the assessees.
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> > 27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessees whose export turnover is above Rs. 10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessee."
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> Against the High Court judgment these SLPs are filed by the Union of India. Mr Mukul Rohatgi, learned Attorney

> General for India submits that once the prayer made was to severe the aforesaid two conditions as onerous and ultra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the Section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs. 10 crores and other like the respondents with turnover of more than Rs. 10 crores would be at par and both would be entitled to the benefits.
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> We find that in essence the High Court has quashed the severable part of third and fourth proviso to Sec. 80HHC(3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute t he direction of the High Court with the following direction:
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>> "Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 Cr. should be treated similarly. This order is in substitution of the judgment in appeal."
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> With the aforesaid clarification all these SLPs including that of assessment filed against the judgement of M.P. High Court are disposed of."

4. Learned counsel for the Petitioner states that the above order of the Supreme Court completely covers the issue raised in this petition.

5. Consequently, the writ petition is disposed of in terms of the aforementioned order dated 30th March, 2015 of the decision of the

Supreme Court in ***CIT-5 v. Avani Exports*** (*supra*).

6. No order as to costs.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 25, 2016
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