**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ITA No. 820 of 2008 (O&M)
Date of decision: 22.02.2017**

Asian Exim International, Jalandhar
... Appellant
versus
Commissioner of Income Tax, Jalandhar
.... Respondent

**CORAM:HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Pankaj Jain, Senior Advocate, with
Mr. Divya Suri, Advocate and
Mr. Sachin Bhardwaj, Advocate for the appellant.
Mr. Zora Singh Klar, Advocate for the respondent.

AJAY KUMAR MITTAL. J (ORAL)

The assessee has preferred this appeal under Section 260A of the Income Tax Act, 1961 against the order of Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No. 318 (ASR) 2007 dated 07.11.2007 for the assessment year 2002-2003 raising following substantial questions of law:

A. Reassessment to 147 are unsustainable.

I Whether on the true and correct interpretation of Section 147, the initiation of the reassessment proceedings are valid ?

II Even if the proceedings under Section 147 are held to be validly initiated whether the Assessing Officer could disallow deduction under Section 80IB in respect of which neither any proceedings had been initiated nor any material had come to his notice subsequently during the course of assessment proceedings ?

III Whether in the true and correct interpretation the *provisions of Section 147 the conclusions are valid on going beyond the reasons which are part of his knowledge before the initiation of the reassessment proceedings ?*

IV Whether on the true and correct interpretation of the provisions of Section 147 the words "Reasons to believe" are discernable from "belief for reasons"?

B. The deduction under Section 80HHC read with the provisions of Section 801A (9) 801B (13).

I Whether on the true and correct interpretation of the provisions of Section 80HHC r.w Section 801A (9) Section 801B (13) the Tribunal has erred in restricting the claim of deduction to the assessee?

C. The deduction under Section 80IB has to be on the content of the Duty Draw Back and DEPB.

I. Whether the Duty Draw back received is an amount derived and eligible for claim under Section 80IB ?

II. Whether the Duty Entitlement Pass Book Scheme received is an amount derived and eligible for claim under Section 80IB ?

III. Whether there can be an interpretation of the word derived distinct from as laid in CIT Vs. Sterling Foods, 237 (1999) ITR 579 (SC) in pursuance to the judgments of State of West Bengal Vs. Anwar Ali, AIR, 1952 (SC) 75 Katikara Chintamani Dora Vs. Guntreddi Anna Manaidu, 1974 (1SCC) 567 ?

V. Whether the Duty Draw back received by the appellant is derived from an Industrial Undertaking per the genesis of the word derived in its true sense and spirits ?

2. Learned counsel for the parties are *ad idem* that the similar issue arising in the case of the assessee for the assessment year 2004-05 has since been answered by this Court in Income Tax Appeal No. 470

of 2010 titled as Asian Exim International Vs. Commissioner of Income Tax, Jalandhar, Punjab decided on 18.04.2011 against the assessee. However, it was stated by the learned counsel for the appellant-assessee that special leave petition (Civil) bearing No. 22128 of 2011 converted to Civil Appeal No.14309 of 2015 assailing the aforesaid orders dated 18.04.2011 has also been filed before the Apex Court which is pending adjudication. It was also submitted that identical issue arising in the case of Assistant Commissioner of Income Tax Vs. Micro Labs Limited (Civil Appeal No. 7427 of 2012) reported as (2016) 380 ITR 1 (SC) has been referred to the larger Bench in civil Appeal No. 10334 of 2016.

3. In view of the above, particularly the order of this Court dated 18.04.2011 in the case of the assessee itself, the substantial questions of law are answered accordingly and the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

22.02.2017
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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No