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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 356/2005**

COMMISSIONER OF INCOME TAX DELHI-IV .... Appellant
Through: Mr. Puneet Rai, Standing Counsel for the Revenue

versus

INERTIA INDUSTRIES LTD. ..... Respondent
Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 23.08.2017

1. This appeal by the Revenue is directed against an order dated 25th November, 2004 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.3807/Del/1999 for the Assessment Year ('AY') 1995-96.

2. While admitting this Appeal on 24th March, 2006, the following question of law was framed for consideration:

> "Whether, on the facts and circumstances of the case, the Tribunal was right in its conclusion that the total turnover in Section 80 HHC of the Income-tax Act, 1961 is only the turnover relating to the export business of the assessee and not a turn over relating to other businesses of the assessee?"

3. The facts in brief are that the Assessee was running two units. The brewery unit was located at Daruhera and the garments export unit at Delhi. It claimed deduction under Section 80 HHC of the Income Tax Act, 1961

(‘the Act’) in its return in the sum of Rs.61,94,977/-. The question before the Assessing Officer (AO) was whether the gross total income of the entire business i.e. of both units, and not just that of the export unit, had to be considered for the purposes of allowing deduction under Section 80 HHC of the Act? The AO took the total turnover of both units into consideration and by the assessment order dated 12th March, 1998 under Section 143(3) of the Act held that the Assessee was entitled to brought forward losses/depreciation amounting to Rs.1,76,90,248/- only. After adjustment of the said sum, the Assessee was held entitled to deduction under Section 80HHC in the sum of Rs.8,25,694/- only.

4. The Assessee's appeal was allowed by the Commissioner of Income Tax (Appeals) [CIT (A)] by order dated 25th June, 1999. It was held that the two export divisions had to be treated separately for computation of turnover for the purpose of Section 80HHC. Accordingly, the CIT (A) allowed the entire deduction as claimed by the Assessee under Section 80 HHC of the Act.

5. The Revenue then went in appeal before the ITAT. In the impugned order, the ITAT held that the Assessee would be entitled to deduction under Section 80 HHC only if after the setting off brought forward losses and unabsorbed depreciation, the Assessee was left with any income. However, the ITAT found force in the contention of the Assessee that the deduction under Section 80 HHC should be worked out on the basis of the turnover of the garments division only and the Assessee should be allowed deduction under Section 80 HHC in so far it did not exceed the gross total income of the Assessee from all business put together. The order of the CIT(A) was set aside on this point and the AO was directed to work out the deduction under

Section 80 HHC on the basis indicated in the order.

6. Learned counsel for the Revenue has drawn the attention of this Court to the judgment of the Supreme Court in ***IPCA Laboratories vs. Dy. Commissioner of Income Tax, Mumbai, (2004) 266 ITR 521 (SC)*** where it has been categorically held that "a plain reading of Section 80-HHC makes it clear that in arriving at profits earned from export of both self-manufactured goods and trading goods, the profits and losses in both the trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction under Section 80-HHC (1)".

7. In view of the above categorical pronouncement of the Supreme Court, the question framed is answered in the negative, i.e. in favour of the Revenue and against the Assessee.

8. The appeal is accordingly allowed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 23, 2017
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