

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM APPL.10317/2017, 14561/2007 IN W.P. (C) 7649/2007

RICHA APPARELS

..... Petitioner

Through: Mr. Deepanshu Jain and Mr. Gaurav
Mittal, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME

TAX, NEW DELHI

..... Respondent

Through: Ms. Vibhooti Malhotra, Jr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

17.03.2017

%

CM APPL.10317/2017 (for early hearing)

This is an application for early hearing of the matter.

Having considered the submissions, the Court is of the opinion that in the interest of justice, the request should be accepted. The application stands allowed. With consent of counsel for the parties, the writ petition is taken up today finally.

W.P. (C) 7649/2007

The writ petitioner questions the reopening of its settled assessment for the assessment year 2002-03. This was purely on

W.P. (C) 7649/2007

Page 1 of 3

account of the retrospective amendment to Sections 28 and 80HHC of the Income Tax Act, 1961. The reason given for reopening is *inter alia* as follows: -

“Reasons for reopening:

Deduction u/s 80HHC has been claimed on DEPB profits which is not allowable in your case in view of Taxation Law (Amendment) Act, 2005.”

At the outset, it is pointed out that the Gujarat High Court had in *Avani Exports v. Commissioner of Income Tax* (2012) 348 ITR 391 held that the said amendment was void, as contrary to Article 14 of the Constitution on account of its retrospective operation. The amendment had restricted benefits to a class of assesseees whose turnover was less than ₹10 Crores. The Revenue’s appeal to the Supreme Court and the appeals of the assesseees with respect to the substantive part of the judgment upholding the amendment prospectively were disposed of by an order dated 30.03.2015 (SLP (C) No.9273/2013, *CIT-5 & Anr. v. M/s Avani Exports & Anr.*); the Supreme Court upheld the decision of the Gujarat High Court in the following terms: -

“Against the High Court judgment these SLPs are filed by the Union of India. Mr. Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to sever 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 Rs. 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.

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 the direction of the High Court with the following direction:

“Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters have a turnover below and those above 10 cr. should be treated similarly. This order is in substitution of the judgment in Appeal.”

With the aforesaid clarification all these SLPs including that of assessee filed against the judgment of M.P. High Court are disposed of.”

In the light of the above developments, the impugned reassessment notice under Section 147/148 cannot be sustained; it is hereby quashed.

The writ petition is, therefore, allowed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 17, 2017

/vikas/