IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 396 OF 2004

P. D. Kothari & Co. .. Appellant

v/s.

Commissioner of Income Tax ..Respondent
Bombay City-VII

Mr. Percy Pardiwala, Senior Counsel a/w Mr. Bhavin Shah i/b Federal & Rashikant for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 14th JUNE, 2018.

P.C.

1. At the time of admission, the respondents have waived service. Inspite of that, none appears on behalf of respondent Revenue today.

2. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) from the order dated 3rd January, 2002 of the Income Tax Appellate Tribunal (the Tribunal) was admitted on 25th January, 2005 on the following substantial question of law :-

> *"Whether on the facts and in the circumstance of the case, the Tribunal was justified in upholding the stand of the Assessing*

Officer that in computing deduction under Section 80HHC of the Income-Tax Act, 1961, the reassortment charges and interest received by the appellant ought to be excluded?"

3. The assessment orders relevant to the present appeals are Assessment Years 1990-91 and 1991-92.

4. The impugned order of the Tribunal dated 3rd January, 2002 held that the service charges (reassortment charges) and interest received by the appellant are to be excluded from the profits and gains of the business or profession for the purposes of claim for deduction under Section 80HHC of the Act. The basis of the Tribunal's order was the decision of this Court in ***Commissioner of Income Tax Vs. Kantilal Chhotalal, 246 ITR 439*** which in turn relied upon the decision of this Court in *Commissioner of Income Tax Vs. K.K. Doshi and Co. 245 ITR 849*. Further, it held that even prior to amendment with effect from 1st April, 1992, the benefit of deduction under Section 80HHC of the Act will not be available to service charges and interest.

5. The decision of this Court in K.K. Doshi and Co. (supra) was reversed by the Apex Court in *K.K. Doshi and Co. Vs. Commissioner of Income Tax, 297 ITR 38* wherein it was held that 90% of the service

charges and interest are excludable from the profits and gains of the business or profession for the purposes of Section 80HHC of the Act consequent to the amendment in Finance Act No.2/91 w.e.f. 1st April, 1992. This amendment it held was prospective in nature and would not apply to assessment prior to Assessment Year 1992-93 as it curtailed the benefit available to the assessee.

6. In the above view, in the present case as we are dealing with the assessment years prior to Assessment Year 1992-93. Therefore, the service charges (reassortment charges) and interest received by the appellant assessee ought not to be excluded from the profit and gains of the business for the purposes of allowing deduction under Section 80HHC of the Act.

7. In the above view, the substantial question of law as proposed is answered in the negative i.e. in favour of the appellant assessee and against the respondent Revenue.

8. In view of the above, the appeal is allowed. No order as to costs.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**