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

\+ W.P.(C) 679/2007

FIRST OVERSEAS ..... Petitioner
Through Mr. Rajiv Talwar, Advocate.

versus

UOI & ANR. ..... Respondent
Through Mr. Puneet Rai, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **12.04.2018**

C.M. No. 13038/2018

Counsel for the respondents states that as the issue is covered, the application may be allowed and the writ petition may be taken up for hearing today itself.

The application is allowed and the writ petition is taken up for hearing.

W.P.(C) 679/2007

Counsel for the parties admit and accept that the issue raised in the writ petition is covered by the decision of the Supreme Court in ***Commissioner of Income Tax-5 and Another Vs. Avani Exports and Another,*** (2016) 16 SCC 741, clarifying and affirming judgment of the Gujarat High Court in ***Avni Exports Vs. CIT***, (2012) 348 ITR 391 (Gujarat).

Paragraph 5 of the decision of the Supreme Court in ***Avani***

Exports (supra) reads as under:-

> "**5.** We find that in essence the High Court has quashed the severable part of third and fourth proviso to Section 80-HHC(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 Section 80-HHC benefit is not available after 1-4-2005, we are satisfied that cases of exporters having a turnover below and those above Rs 10 crores should be treated similarly. This order is in substitution of the judgment in appeal."

The writ petition is accordingly allowed in terms of the decision of the Supreme Court in ***Avani Exports*** (supra). The assessing authority would accordingly compute the benefit under Section 80-HHC of the Income Tax Act, 1961 within 10 weeks from the date copy of this order is served on the respondent. There would be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 12, 2018
NA