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

\+ W.P.(C) 11829/2006

M/S SIGMA CORPORATION INDIA LTD. ..... Petitioner
Through Mr. Satyen Sethi, Mr. Arta Trana Panda and Ms. Gargi Sethee, Advs.

versus

UOI AND ORS ..... Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **05.04.2018**

In this petition, the relief prayed is for declaring 3rd and 4th proviso to Section 80HHC(3) of the Income Tax Act (the 'Act') introduced by Taxation Laws Amendment Act 2005 with prospective effect from 01.04.1998. The court had at the time of entertaining this writ petition also issued orders that it should be heard alongwith WP(C) 3768/2006 (*Sarita Handa Vs. UOI & Ors.*).

That writ petition i.e. *Sarita Handa's* writ petition was disposed of by an order dated 10.01.2018. The material portion of the said order reads as follows :

> *"3. This Court had issued Rule and admitted these petitions to hearing. In the meanwhile, the Gujarat High Court vide its judgment in 'Avani Exports and others vs. Commissioner of Income-tax and others, (2012) 348 ITR (Guj) held that the amendments were unconstitutional. That judgment became the*

subject matter of the appeal to the Supreme Court in 'Commissioner of Income-tax vs. Avani Exports', (2015) 58 taxmann.com 100 (SC), which affirmed the declaration and held that the retrospectivity ascribed to the amendments, was unconstitutional. Consequently, the amendments became, in effect, prospective in nature.

4. This Court notices that in the meanwhile, a Division Bench of this Court in 'Pawan Kumar Jain vs. Union of India', (2014) 46 taxmann.com 341 (Delhi) had also concluded that the amendment could not be treated as retrospective and directed further relief. In the light of these developments, the Court is of the opinion that the provisions are to be treated as prospective and not retrospective; the reliefs in these proceedings are therefore, to be granted. Writ petitions are allowed in terms of the declaration of law in Avani Exports; any demands made or benefits sought to be curtailed or withdrawn, are declared as illegal.

5. Writ petitions are allowed in the above terms."

Since the question of law and the relief sought are identical in the present case, this petition too is allowed in the above terms. There shall be no order as to costs.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 05, 2018

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