



T.C.A.No.847 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 15.04.2026

Judgment Delivered on: 02.06.2026

Coram;

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN  
and  
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

T.C.A.No.847 of 2008

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M/s.Brakes India Limited,  
Padi, Chennai-600 050.

.. Appellant

Vs.

The Assistant Commissioner of Income Tax,  
Company Circle I(2),  
Chennai-600 034.

.. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against I.T.A.No.430/Mds/2006 , Assessment Year 2002-03, on the file of the Income Tax Appellate Tribunal, Madras “A” Bench, dated 12.10.2007.

For appellant : M/s.R.Vijayaraghavan and R.Venkatanarayanan

For respondent: Mr.T.Ravikumar, Senior Standing Counsel



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## JUDGMENT

Dr.G.Jayachandran, J

The appellant is engaged in the business of manufacture of automobile parts. For the assessment year under consideration, i.e. 2002-2003, the appellant filed its Return of income on 31.10.2002 admitting income of Rs.22,01,34,205/- after claiming deduction under Section 80-G, 80-HHC and 80-IA of the Income Tax Act. Notice under Section 143(2) of the Act was issued on 19.09.2003 and scrutiny assessment under Section 143(3) was completed on 28.02.2005, determining the income at Rs.24,22,39,334/-. While computing the assessment, the Assessing Officer restricted the claim of deduction under Sections 80-HHC and 80-IA of the Act among others.

2. Aggrieved by the assessment order, the appellant/assessee had preferred appeal before the appellate authority, which had confirmed the action of the Assessment Officer regarding the dis-allowance of simultaneous deduction under Section 80-HHC and 80-IB of the Act.

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3. Insofar as the alternate submission of the assessee, that, while assessing the profits and gains for computation under Section 80-HHC, the deduction under Section 80-IB relating to two undertakings, having export turnover, should be reduced from the profits and gains for computing the deduction under Section 80-HHC, was accepted.

4. In respect of the third contention regarding the scrap sale, the appellate authority held that 90% of the scrap sale should not be excluded from the profits of the business and scrap sale, should not form part of the total turnover for the purpose of computing the deduction under Section 80-HHC,

5. The claim of the assessee in respect of the sub-contract income and other income through the lease rental interest and duty draw-back, the action of the assessee was confirmed and held against the assessee.

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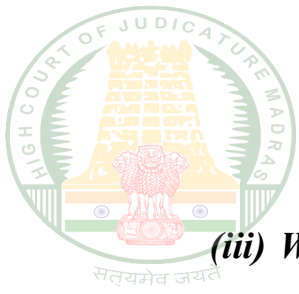
6. Being aggrieved by the order of the Commissioner of Income Tax

(Appeals), who partly allowed the assessee's appeal, both the assessee as well as the Revenue preferred appeal before the Income Tax Appellate Tribunal. The Tribunal, vide order dated 12.10.2007, partly allowed the appeal of the assessee and partly allowed the appeal of the Revenue. The present appeal is filed by the assessee.

6. At the time of admitting the appeal on 03.04.2008, the following substantial questions of law are framed by this Court:

*(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the relief under Section 80-IA of the Income Tax Act, should be deducted from profits and gains of business before computing relief under Section 80-HHC of the Act ?*

*(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction under Section 80-IB of the Act in respect of DEPB, lease rentals and interest ?*



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***(iii) Whether the Tribunal erred in not considering the specific grounds***

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***4.1 and 4.2 relating to exclusion of 90% of sub-contract work and other income from the profits of the business for the purpose of computing deduction under Section 80-HHC ?***

7. The first substantial question of law is covered by the decision of the Honourable Supreme Court in the case of Shital Fibres Limited Vs. CIT, reported in (2025) 174 Taxmann.com 807 (SC), in which, it was held by the Apex Court as follows:

“18. Section 80-IB deals with deductions in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. The deduction under said provision is applicable when gross total income of an assessee includes any profit or gain derived from any business mentioned in various Sub-sections of Section 80-IB. An assessee is entitled to a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in the Section.



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19. In this context, now the provision of Sub-section (9) of Section 80-IA must be considered. Sub-section (9) of Section 80-IA reads thus:

“(9). Where any amount of profits and gains of an undertaking or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading ‘C—Deductions in respect of certain income’ and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

Let us analyse Sub-section (9). It is applicable where any amount of profits and gains of an undertaking or enterprise is claimed and allowed under Section 80-IA. As stated earlier, the deduction is to the extent of percentage of profits and gains derived from certain category of businesses. Sub-section (9) of Section 80-IA provides that the deduction to the extent of profit or gain shall not be allowed under any other provisions under heading ‘C’ of Chapter VI-A. It is further provided in Sub-section (9) that in no case, the deduction allowed under any other



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provision of Chapter VI-A under the heading 'C' shall exceed profits and gains of such eligible business of undertakings or enterprises, as the case may be.

20. Therefore, on plain reading of Sub-section (9) of Section 80-IA, if a deduction of profits and gains under Section 80-IA is claimed and allowed, the deduction to the extent of such profits and gains in any other provision under the heading 'C' is not allowed. The deduction to the extent allowed under Section 80-IA cannot be allowed under any other provision under heading 'C'. Therefore, if deduction to the extent of 'X' is claimed and allowed out of gross total income of 'Y' under Section 80-IA and the assessee wants to claim deduction under any other provision under the heading 'C', though he may be entitled to deduction 'Y' under the said provision, he will get deduction under the other provisions to the extent of (Y-X) and in no case total deductions under heading 'C' can exceed the profits and gains of such eligible business of undertaking or enterprise.

21. Sub-section (9) of Section 80-IA, on its plain reading, does not provide that when a deduction is allowed under Section 80-IA, while considering



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the claim for deduction under any of the provision under heading ‘C’, the deduction allowed under Section 80-IA should be deducted from the gross total income. The restriction under sub-section (9) of Section 80-IA is not on computing the total gross income. It restricts deduction under any other provision under heading ‘C’ to the extent of the deduction claimed under Section 80-IA.”

8. The second question of law is covered by the decision of the Honourable Supreme Court in the case of Liberty India Vs. Commissioner of Income Tax, reported in (2009) 183 Taxmann 349 (SC).

9. In view of the above ruling of the Honourable Supreme Court, it is useful to extract the relevant paragraphs of the Liberty India case, as follows:

“16. DEPB is an incentive. It is given under Duty Exemption Scheme. Essentially, it is an export incentive. No doubt, the object behind DEPB is to neutralize the incidence of customs duty payment on the import content of export product. This neutralization is provided for by credit to customs

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duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components, etc. DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per basic customs duty and special additional duty payable on such deemed imports. Therefore, in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from Section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under section 80-IB. They belong to the category of ancillary profits of such Undertakings.

17. The next question is – what is duty drawback ? Section 75 of the Customs Act, 1962 and Section 37 of the Central Excise Act, 1944 empower Government of India provide for repayment of customs and excise duty paid by an assessee. The refund is of the average amount of duty paid on materials of any particular class or description of goods used in the manufacture of export goods of specified class. The Rules do not envisage a refund of an amount arithmetically equal to customs duty or central excise duty actually paid by an individual importer-cum-manufacturer. Sub-section (2) of Section 75 of the Customs Act requires the amount of drawback to be determined on a consideration of all the circumstances prevalent in a particular trade and



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also based on the facts situation relevant in respect of each of various classes of goods imported. Basically, the source of duty drawback receipt lies in Section 75 of the Customs Act and Section 37 of the Central Excise Act.

18. Analysing the concept of remission of duty drawback and DEPB, we are satisfied that the remission of duty is on account of the statutory/policy provisions in the Customs Act/Scheme(s) framed by the Government of India. In the circumstances, we hold that profits derived by way of such incentives do not fall within the expression “profits derived from industrial undertaking” in Section 80-IB.”

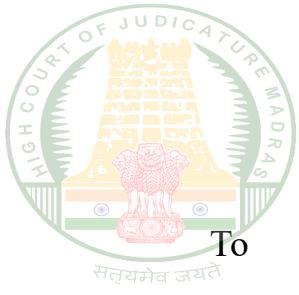
10. Following the dictum of the Supreme Court in the above case, insofar as the first substantial question of law is concerned, the matter is remanded back for re-computation. In respect of the second and third substantial questions of law, the Assessing Officer is directed to follow the above dictum laid down by the Honourable Supreme Court and pass fresh assessment order.

11. With the above direction, this appeal is disposed of.

(G.J., J) (R.S.V., J)  
02.06.2026

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To

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The Assistant Commissioner of Income Tax,  
Company Circle I(2),  
Chennai-600 034.



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and  
R.Sakthivel, J

CS

Pre-delivery Judgment in

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