

Tribunal vide its order dt. 2nd July, 1997 allowed the claim of the respondent-assessee by holding that s. 80AB has no application to a case covered by s. 80HHC of the Act.

6. Aggrieved, appellant filed an appeal before High Court. High Court vide its impugned judgment and final order dt. 12th March, 2003 [reported as *CIT vs. Harisons Malayalam Ltd. (2004) 188 CTR (Ker) 469—Ed.*] dismissed this appeal and affirmed the decision of the Tribunal.

7. Nobody is present on behalf of the respondent-assessee. We have heard learned senior counsel appearing for the appellant Mr. Dhruv Mehta. He has drawn our attention to the recent judgment rendered by this very Bench in the case of *Jeyar Consultant & Investment (P) Ltd. vs. CIT (2015) 276 CTR (SC) 65 : (2015) 117 DTR (SC) 369 : 2015 (4) SCALE 410* wherein it is categorically held that to avail the benefit of s. 80HHC of the IT Act there has to be positive income from the export business. The said judgment in our opinion squarely covers the present case. The order of the High Court is accordingly set aside and the order of the AO is restored.

8. The appeal is accordingly disposed of.

ASHISH PLASTIC INDUSTRIES vs. ASSISTANT COMMISSIONER OF INCOME TAX

SUPREME COURT OF INDIA

A.K. Sikri & Rohinton Fali Nariman, JJ.

Civil Appeal No. 1509 of 2004*

23rd March, 2015

(2015) 120 DTR (SC) 235

Income-tax Act, 1961, s. 69

In favour of : Revenue with remand; Assessment years 1992-93 & 1993-94

Income from undisclosed sources—Addition—Unaccounted sales vis-a-vis sales accounted for by sister concern—Partners of the assessee-firm admitted excess stock in their statements recorded under s. 131—Though the assessee explained the difference before the CIT(A) with the help of the books of account of its sister concern AA Ltd., it was found that unaccounted sales of 32,809 kgs of finished goods were made to AA Ltd.—CIT(A) upheld the additions made on account of unaccounted production, sales and closing stock of finished products—Same has been upheld by the Tribunal as well as the High Court—Assessee's counsel has submitted that he can offer to adduce

*From the judgment and order dt. 7th March, 2003 of the Gujarat High Court in Tax Appeal No. 292 of 2002

satisfactory evidence in support of his plea that the aforesaid sales have been shown as income by AA Ltd. on which tax has been paid by it—If the assessee is able to prove that tax on the income generated from the sale of the aforesaid finished products has been paid by AA Ltd. benefit thereof should be extended to the assessee—Therefore, matter is remanded back to the assessing authority to give an opportunity to the assessee to demonstrate as to whether AA Ltd. has already paid the tax on the income from the aforesaid sales, and to accord benefit to the assessee if that is shown

(Para 4)

Conclusion : *In view of the averment by the assessee's counsel that the unaccounted sales of the assessee have been shown as income by its sister concern on which tax has been paid by it, matter is remanded back to the assessing authority to give an opportunity to the assessee to demonstrate as to whether the sister concern has already paid the tax on the income from the aforesaid sales, and to accord benefit to the assessee if that is shown.*

Counsel appeared : *Manish J. Shah, Kumar Shashank & Abhishek Vinod Deshmukh, for the Appellant : Rupesh Kumar, Mrs. Anil Katiyar, Ms. Shweta Garg & B.V. Balaram Das, for the Respondent*

ORDER—BY THE COURT :

The appellant-assessee is a registered firm engaged in the business of manufacture of PVC pipes of different varieties and sizes. Survey operations were conducted by the IT authorities under s. 133A of the Income-tax Act, 1961 (hereinafter referred to as 'Act') at the factory premises of the assessee on 23rd Sept., 1993. During the course of survey operations, the stock at the premises was physically verified by the survey party and total stock of the value of Rs. 16,92,420 was found. Statements of both the partners were recorded under s. 131 of the Act. In the said statement, it was admitted that the stock as per books was around Rs. 3 lakhs and the excess stock of Rs. 13,92,000 was, accordingly, admitted. On this basis, the addition was made and the assessment order was passed by the assessing authority in respect of the asst. yrs. 1992-93 and 1993-94.

2. Before the CIT(A), the appellant-assessee sought to explain this difference by alleging that upto 23rd Sept., 1993, sales of 32,809 Kgs. of finished products was made by one of the sister concerns of the assessee, namely, M/s Ashish Agro Plast (P) Ltd., and the same was wrongly shown to be that of the assessee. On this plea taken by the assessee, in support of which some documents/materials were also filed, the CIT(A) asked for remand report from the assessing authority. Before the assessing authority, the representatives of assessee were asked to produce the books of account of M/s Ashish Agro Plast (P) Ltd. for the asst. yrs. 1993-94 and 1994-1995. It was found that the sales of the finished product of 32,809 Kgs. as shown in the sales register of the sister concern tallies

with the impounded stock register. It was also found that the sales proceeds was received by the sister concern, namely M/s Ashish Agro Plast (P) Ltd. through its bank account in Bank of Baroda, Dudheshwar Road Branch, Ahmedabad. The cheques received against those sales were cleared even prior to the date of survey. Notwithstanding the aforesaid finding which vindicated the stand of the assessee to the aforesaid extent, it was further found that the sale of 33,682 Kgs. of finished goods was nothing but unaccounted sales out of which 32,809 Kgs. sales was made to the aforesaid sister concern of the assessee. Taking into consideration this aspect, the CIT(A) upheld the order of the assessing authority justifying the additions made on account of unaccounted production, sales and closing stock of finished products. This order has been upheld by the Tribunal as well as the High Court. In fact, the High Court dismissed the appeal of the assessee preferred under s. 260A of the Act on the ground that no substantial question of law arose.

3 Normally, going by the aforesaid facts noted, the High Court may be correct in its observation that no substantial question of law arose. However, learned counsel for the appellant-assessee has brought to our notice a different aspect which was raised at the time of admission of the present special leave petition filed by the appellant. He drew our attention to order dt. 27th Feb., 2004 which reads as under :

“Leave granted limited to the question as to whether in respect of sales of 32,809 kgs., which are shown in the stock register of M/s Ashish Agro Plast (P) Ltd., there has been double taxation.”

4. It is clear from the above that leave was granted limited to the question as to whether the addition made on account of aforesaid sale would amount to double taxation. To put it differently, the submission of the learned counsel for the appellant is that on the aforesaid sales, which are found in the accounts of M/s Ashish Plastic Industries, the receipts are shown as income on which tax has been paid by M/s Ashish Agro Plast (P) Ltd. During the hearing of this appeal, learned counsel submitted that he can bring satisfactory evidence in support of this plea. We are of the view that the orders of the authorities below should be sustained but if the appellant is able to prove that tax on the income generated from the sale of the aforesaid 32,809 Kgs. of material has been paid by M/s Ashish Agro Plast (P) Ltd., benefit thereof should be extended to the appellant. For this purpose, therefore, we remand the case back to the assessing authority, who shall give an opportunity to the assessee to demonstrate as to whether the sister concern has already paid the tax on the aforesaid income from the aforesaid sales and if that is shown, to the extent tax is paid, benefit shall be accorded to the appellant.

4. The appeal stands disposed of.
