REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7427 OF 2012

The Asstt. Commissioner of Income Tax, Bangalore ... Appellant

Versus

M/s. Micro Labs Ltd. ... Respondent

WITH

C.A. NO. 14295 OF 2015 @ S.L.P. (C) NO.6445 OF 2011,
C.A. NO.14297 OF 2015 @ S.L.P. (C) NO.6829 OF 2011,
C.A. NO.14298 OF 2015 @ S.L.P. (C) NO.6926 OF 2011,
C.A. NO.14299 OF 2015 @ S.L.P. (C) NO.6938 OF 2011,
C.A. NO.14300 OF 2015 @ S.L.P. (C) NO.8603 OF 2011,
C.A. NO.14301 OF 2015 @ S.L.P. (C) NO.8879 OF 2011,
C.A. NO.14302 OF 2015 @ S.L.P. (C) NO.8923 OF 2011,
C.A. NO. 14303 OF 2015 @ S.L.P. (C) NO.10243 OF 2011,
C.A. NO.14304 OF 2015 @ S.L.P. (C) NO.13992 OF 2011,
C.A. NO.14305 OF 2015 @ S.L.P. (C) NO.17319 OF 2011,
C.A. NO.14306 OF 2015 @ S.L.P. (C) NO.21221 OF 2011,
C.A. NO.14307 OF 2015 @ S.L.P. (C) NO.21222 OF 2011,
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C.A. NO.14309 OF 2015 @ S.L.P. (C) NO.22128 OF 2011, C.A. NO.14310 OF 2015 @ S.L.P. (C) NO.23918 OF 2011, C.A. NO.14311 OF 2015 @ S.L.P. (C) NO.24682 OF 2011, C.A. NO.14312 OF 2015 @ S.L.P. (C) NO.25006 OF 2011, C.A. NO.14313 OF 2015 @ S.L.P. (C) NO.25664 OF 2011, C.A. NO.14314 OF 2015 @ S.L.P. (C) NO.25755 OF 2011, C.A. NO.14315 OF 2015 @ S.L.P. (C) NO.25987 OF 2011, C.A. NO.14316 OF 2015 @ S.L.P. (C) NO.25988 OF 2011, C.A. NO.14317 OF 2015 @ S.L.P. (C) NO.26002 OF 2011, C.A. NO.14318 OF 2015 @ S.L.P. (C) NO.26025 OF 2011, C.A. NO.14319 OF 2015 @ S.L.P. (C) NO.26246 OF 2011, C.A. NO.14320 OF 2015 @ S.L.P. (C) NO.26250 OF 2011, C.A. NO.14322 OF 2015 @ S.L.P. (C) NO.26418 OF 2011, C.A. NO.14323 OF 2015 @ S.L.P. (C) NO.26818 OF 2011, C.A. NO.14324 OF 2015 @ S.L.P. (C) NO.27270 OF 2011, C.A. NO.14325 OF 2015 @ S.L.P. (C) NO.28128 OF 2011, C.A. NO.14326 OF 2015 @ S.L.P. (C) NO.29796 OF 2011, C.A. NO.14327 OF 2015 @ S.L.P. (C) NO.31207 OF 2011, C.A. NO.14328 OF 2015 @ S.L.P. (C) NO.31208 OF 2011, C.A. NO.14329 OF 2015 @ S.L.P. (C) NO.33936 OF 2011, C.A. NO.14330 OF 2015 @ S.L.P. (C) NO.33938 OF 2011, C.A. NO.14331 OF 2015 @ S.L.P. (C) NO.227 OF 2012, C.A. NOS. 14332-14333 OF 2015 @ S.L.P.(C)NOS.907-908 OF 2012, C.A. NO.14334 OF 2015 @ S.L.P. (C) NO.909 OF 2012, C.A. NO.14335 OF 2015 @ S.L.P. (C) NO.910 OF 2012, C.A. NO.14336 OF 2015 @ S.L.P. (C) NO.931 OF 2012, C.A. NO. 14337 OF 2015 @ S.L.P. (C) NO.2291 OF 2012, C.A. NO.14338 OF 2015 @ S.L.P. (C) NO.2292 OF 2012, C.A. NO.14339 OF 2015 @ S.L.P. (C) NO.5762 OF 2012, C.A. NO.14340 OF 2015 @ S.L.P. (C) NO.6111 OF

2012, C.A. NO.14341 OF 2015 @ S.L.P. (C) NO.6677 OF 2012, C.A. NO.14342 OF 2015 @ S.L.P. (C) NO.8476 OF 2012, C.A. NO.14343 OF 2015 @ S.L.P. (C) NO.9472 OF 2012, C.A. NO.14344 OF 2015 @ S.L.P. (C) NO.12874 OF 2012, C.A. NO.14345 OF 2015 @ S.L.P. (C) NO.19923 OF 2012, C.A. NO.14346 OF 2015 @ S.L.P. (C) NO.34816 OF 2012, C.A. NO.14347 OF 2015 @ S.L.P. (C) NO.10591 OF 2013, C.A. NO.7847 OF 2012, C.A. NO.4544 OF 2013, C.A. NO.5341 OF 2013 AND C.A. NO.1890 OF 2015.

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted in all the Special Leave Petitions.

2. These are several appeals which involve the same issue as in Civil Appeal No.7427 of 2012 and therefore, all the appeals have been heard together at the request of the learned counsel appearing for both the sides but for the purpose of deciding all these appeals, I have considered facts of C.A.No.7427 of 2012, which are as under :

3. Being aggrieved by the judgment delivered in ITA 471 of 2008 dated 11th July, 2011 by the High Court of Karnataka at Bangalore, this appeal has been filed by the Assistant Commissioner of Income Tax, Bangalore. The appellant has been referred to hereinafter as 'the Revenue', whereas the respondent M/s. Micro Labs Ltd. has been referred to as 'the Assessee'.

4. The Assessee was aggrieved by the Order dated 11th January, 2008 passed in ITA No.367/Bang/07 by the Income Tax Appellate Tribunal, Bangalore Bench and had, therefore, approached the High Court of Karnataka at Bangalore. The High Court allowed the appeal and therefore, the Revenue has filed this appeal.

5. The question which had to be considered by the Tribunal as well as by the High Court was whether, while considering the deduction under the provisions of Section 80-IA or/and 80-IB of the Income Tax Act, 1961 (hereinafter referred to as

'the Act'), the Assessee is also entitled to the deduction in respect of the profits and gains under the provisions of Section 80HHC of the Act or whether the Assessee is entitled to deductions under the aforestated all the three Sections in respect of the same profits. Upon perusal of the aforestated Sections and looking at the facts of the case, the Tribunal had come to the conclusion that the Assessee was not entitled to deductions under Sections 80HHC and 80-IB of the Act but the High Court did not agree with the said conclusion arrived at by the Tribunal and decided in favour of the Assessee to the effect that though the Assessee had claimed and was allowed deductions under Section 80HHC of the Act, the Assessee was also entitled to deductions under the provisions of Section 80-IB of the Act in respect of the same profits.

6. Thus, in this appeal what is to be considered is whether the Assessee was entitled to the deductions claimed by it under the aforestated Sections as decided by the High Court in favour of the Assessee. The case of the Revenue is that

looking at the provisions of the aforestated Sections, the Assessee is not entitled to the deductions under all the aforestated Sections of the Act.

7. On the aforestated subject, different views have been taken by different High Courts and therefore, this appeal had been admitted. The High Court of Bombay has decided cases in favour of the Assessee whereas a different view has been taken by the High Court of Delhi.

8. For the purpose of better understanding of the issue, relevant extracts of the said Sections of the Act have been reproduced hereinbelow:

> *"**80-IB. Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings. –** (1) Where the gross total income of an Assessee includes any profits and gains derived from any business referred to in sub-Sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of the Section, be allowed, in computing the total income of the Assessee, a deduction from such profits and gains of an amount equal to such*

percentage and for such number of assessment years as specified in this Section.

(2) to (12) xxx xxx xxx

(13) The provisions contained in sub-Section (5) and sub-Section (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible business under this Section."

"80-IA. Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. –
(1) to (8) xxx xxx xxx

(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 incomes", and shall in no case exceed the profits and gains of such eligible business of (undertaking) or enterprise, as the case may be."

*"**80HHC. Deduction in respect of profits retained for export business.**-(1) Where an Assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this Section applies, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing*

the total income of the assessee, [a deduction to the extent of profits, referred to in sub-Section (1B)] derived by the assessee from the export of such goods or merchandise:

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate (hereafter in this Section referred to as an Export House or a Trading House, as the case may be), issues a certificate referred to in clause (b) of sub-Section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-Section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the [total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

(1A) xxx xxx xxx

(1B) For the purposes of sub-Sections (1) and (1A), the extent of deduction of the profits shall be an amount equal to –

(i) eighty per cent thereof for an assessment year beginning on the 1st day of April, 2001;

(ii) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004;

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year."

9. So far as Civil Appeal No.7427 of 2012 is concerned, which is against the judgment delivered by the High Court of Karnataka at Bangalore, as stated hereinabove, the same has been decided in favour of the Assessee and in the circumstances, the Revenue has preferred the present appeal as it has been aggrieved by the way in which the deductions were permitted by the High Court from the same profits and gains of the business to the Assessee under Sections 80HHC and 80-IB of the Act. According to the case of the Revenue, the Tribunal was right in deciding the case of the Assessee and the High Court committed an error while interpreting the legal provisions of the Sections referred to hereinabove.

10. The learned counsel appearing for the Revenue had submitted that the intention behind enactment of the aforestated three Sections of the Act was to see that no assessee gets deductions twice under the provisions of the aforestated Sections. In nutshell, the submission on behalf of the Revenue was that having once obtained deduction under the provisions of Sections 80-IB or/and 80-IA of the Act, no assessee can then avail deductions under Section 80HHC of the Act in respect of the same profits. It had been specifically stated on behalf of the Revenue that Section 80-IA(9) of the Act had been amended with effect from 1st April, 2000 so as to see that the total deduction does not exceed total profits and gains of the business and in respect of the same profits, deductions under Section 80HHC and Sections 80-IA or 80-IB together cannot be allowed.

11. The learned counsel appearing for the Revenue had read and tried to interpret each of the aforestated Sections and specifically put his emphasis on that part of the Section which

prevents the assessee from taking advantage of having deductions from both of the Sections referred to hereinabove.

12. Section 80HHC, according to the learned counsel appearing for the Revenue, deals with the deductions which can be availed by the assessee who is engaged in the business of export out of India of any goods or merchandise to which the said Section applies. The said Section deals with the manner in which the deduction can be claimed by the assessee.

13. So far as Section 80-IA is concerned, it pertains to deductions in respect of profits and gains from industrial undertakings or enterprises engaged in the business of infrastructure development. Section 80-IA(9) of the Act specifically provides that when any deduction is claimed and allowed under the provisions of Section 80-IA of the Act, deduction to the extent of such profits and gains cannot be allowed under any other provisions under heading "C. –

Deductions in respect of certain incomes" of the Chapter in which Section 80HHC has been included. Similarly, it had been submitted by the learned counsel that so far as Section 80-IB is concerned, it pertains to deduction in respect of profits and gains from certain industrial undertakings other than the business of infrastructure development. He had further submitted that Section 80-IB(13) also provides that certain provisions of Section 80-IA would also apply to Section 80-IB, like the provisions of Sub-Section (5) and Sub-Sections (7) to (12) of Section 80-IA.

14. The learned counsel had, thus, submitted that by virtue of the provisions of Section 80-IB(13), the provisions applicable to industrial undertakings to whom deductions under Section 80-IA are granted, would also apply to certain extent. By virtue of the aforestated provisions of Section 80-IB(13), provisions of Section 80-IA(9) would also apply to the industrial units who claim benefit of deduction under Section 80-IB of the Act.

15. According to the learned counsel, Section 80-IA(9) is clear to the effect that once a deduction is claimed under Section 80-IA, no deduction can be claimed under heading 'C' of Chapter VIA. Section 80HHC is included in heading 'C' of Chapter VIA and therefore, if an assessee claims and is allowed deduction under Section 80-IA or Section 80-IB, he cannot be allowed any deduction under Section 80HHC or any other Section that falls under heading "C" of Chapter VIA of the Act.

16. Now, let us look at the case with which we are concerned. The Assessee in the main appeal is having several industrial units having different activities or different businesses. The Assessee being also in the business of export, had also claimed and was allowed deduction under Section 80HHC. In spite of the fact that the Assessee had claimed deduction in respect of the provisions of Section 80-IB, the Assessee had also claimed deduction under Section 80HHC with respect to the same profits. The Assessing Officer had allowed

deductions under Section 80HHC without considering the fact that the Assessee had also claimed and was allowed deduction under the provisions of Section 80-IB. In the aforestated circumstances, the Commissioner of Income-Tax, exercising his power under Section 263 of the Act vide order dated 26th February, 2007, observed that the Assessing Officer was not correct in allowing deductions under Section 80-IB as well as under Section 80HHC and therefore, directed the Assessing Officer to revise the assessment order.

17. The said order passed by the Commissioner of Income-Tax had been challenged by the Assessee before the Tribunal and the Tribunal was pleased to dismiss the appeal and therefore, the Assessee had filed an appeal before the High Court which has been allowed. Being aggrieved, the Revenue has filed this appeal.

18. On the other hand, the learned counsel appearing for the Assessee in Civil Appeal No.7427 of 2012 and other connected

appeals had submitted that the view expressed by the High Court is absolutely correct. According to the learned counsel, the statute wants to give deduction to the Assessee in respect of both the activities, namely in respect of export of goods as well as with respect to infrastructure development etc. and as the assesses in all the cases are engaged in the business of export as well as in the business of infrastructure development etc., the assesses are entitled to claim deductions in respect of export business as well as infrastructure development activities, etc.

19. According to the learned counsel, if there is any confusion or any ambiguity in the tax law, benefit thereof should be given to the assessee and the High Court of Karnataka and some other High Courts in the country had rightly permitted the assesses to claim deductions under both the Sections. Thus, the counsel appearing for the assesses had supported the reasons given by the High Court and had

submitted that the appeals filed by the Revenue deserve dismissal.

20. I have heard the learned counsel and considered the judgments referred to by them and the provisions of the Act concerning the subject of the appeals.

21. Upon perusal of the Sections referred to hereinabove and the judgments discussed during the course of the hearing, I am of the view that the High Court of Karnataka is not right when it decided to allow deductions in respect of same profits under Section 80HHC as well as under Section 80-IA or Section 80-IB.

22. One can very well see from the provisions of Section 80-IA(9) that if an Assessee is engaged in infrastructure development as well as in the export business, he cannot claim deduction of his entire profits and gains under the provisions of Section 80HHC as well as under Section 80-IA or/and Section 80-IB of the Act.

23. Section 80-IA(9) is quite unambiguous, which clearly provides that if an assessee claims any deduction under the provisions of Section 80-IA, then the assessee cannot claim deduction to the extent of such profits and gains under heading 'C' of Chapter VIA of the Act, which, in the present case, was claimed and wrongly allowed to the Assessee.

24. Section 80HHC, which pertains to deduction in respect of profits and gains from export business, is included under heading 'C', of Chapter VIA of the Act.

25. If an assessee claims and is allowed any deduction under Section 80HHC, then to the extent to which deduction has been granted to him under Section 80-IA or/and 80-IB, he cannot be allowed further deduction under Section 80HHC. The language is not only very clear, but is also absolutely unambiguous, as it says :

> **"***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 incomes", and shall in no case exceed the profits and gains of such eligible business of (undertaking) or enterprise, as the case may be."*

26. Admittedly, the Assessing Officer had allowed deductions not only under Section 80HHC but also under Section 80-IB in respect of the entire profits and gains of the business of the Assessee. In the opinion of the Commissioner, it was not proper and therefore, he had taken the matter in revision under Section 263 of the Act. He, ultimately, directed the Assessing Officer to re-assess the income in the light of the observations made in the order passed under Section 263 of the Act and the said order passed by the Commissioner had also been confirmed by the Tribunal. However, the order of the Tribunal, when challenged before the High Court, was quashed and set aside.

27. In the instant case, I also find that the intention of the legislature is very clear to the effect that if an assessee claims

any deduction under the provisions of Sections 80-IA or/and 80-IB, he cannot claim deduction to the extent to such profits and gains which had been claimed and allowed under the provisions of Section 80HHC of the Act, because Section 80HHC is included in heading 'C' of Chapter VIA of the Act.

28. In my opinion, the High Court was in error while permitting the Assessee to get benefit in respect of Section 80HHC as it did not take into account the fact that the profits in respect of which deduction was allowed under Section 80HHC had also been previously allowed under Section 80-IB. In my opinion, this is not permissible under Section 80-IB(13) read with Section 80-IA(9) because by virtue of Section 80-IB(13) provisions of Section 80-IA(9) are also applicable to Section 80-IB.

29. For the aforestated reasons, I am not in agreement with the view expressed by the High Court and therefore, I decide the appeals in favour of the Revenue by holding that the

Assessee who had claimed and had been allowed deductions in respect of profits under Section 80-IB, could not have been allowed deductions in respect of the same profits under Section 80HHC of the Act.

30. Other issues, though referred to in the memo of appeals, had not been pressed seriously and therefore, I am not deciding the same by keeping the said issues open.

31. The appeals, thus, stand disposed of as allowed in favour of the Revenue with no order as to costs.

.....J.
(ANIL R. DAVE)

NEW DELHI;
DECEMBER 10, 2015.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7427 OF 2012

ASSIT. COMMR. OF I.T. BANGALORE ... Appellant

Versus

M/S MICRO LABS LTD. ... Respondent

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J U D G M E N T

Dipak Misra, J.

Leave granted in the special leave petitions.

2. Having perused the judgment of my esteemed brother, for whom I have the deepest respect, I am unable to concur with the view expressed by him. Hence, I pen a separate opinion.

3. In this batch of appeals, the issue that really arose before the different High Courts is :

> "Whether the Tribunal was justified in holding that section 80-1A(9) of the Income-Tax Act, 1961 mandates that the amount of profits allowed as deduction under section 80-1A(1) of the Act has to be reduced from the profits of the business of the undertaking while computing deduction under any another provisions under heading C in Chapter VI-A of the Income-tax Act, 1961?"

4. Be it stated, I have taken the said question from the judgment of the High Court of Bombay in ***Associated Capsules Private Limited v. Deputy Commissioner of Income Tax and another***[1] and the said judgment has been placed reliance upon by the High Court of Bombay in the appeal arising out of Special Leave Petition (Civil) No. 26002 of 2011. The High Court allowing the appeal of the assessee did

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1 [2011] 332 ITR 42 (Bom)

not agree with the view of the High Court of Delhi and opined thus:-

> "We find it difficult to subscribe to the views expressed by the Delhi High Court in interpreting the provisions of section 80-1A(9). In that case, in fact, the counsel for the Revenue had argued (see para 38 of the judgment) that section 80-1A(9) applies at the stage of allowing deduction and not at the stage of computing deduction under other provisions under heading C of Chapter VI-A. It was argued that in the matter of grant of deduction, the first stage is computation of deduction and the second stage is the allowance of the deduction. Computation of deduction has to be made as provided in the respective sections and it is only at the stage of allowing deduction under section 80-1A(1) and also under other provisions under heading C of Chapter VI-A, the provisions of section 80-1A(9) come into operation. While accepting the arguments advanced by the counsel for the Revenue, it appears that the Delhi High Court failed to consider the important argument of the Revenue noted in paragraph 38 of its judgment. Moreover, without rejecting the argument of the Revenue that section 80-1A(9) applies at the stage of allowing the deduction and not at the stage of computing the deduction, the Delhi High Court could not have held that section 80-1A(9) seeks to disturb the method of computing the

deduction provided under other provisions under heading C of Chapter VI-A of the Act. In these circumstances, we find it difficult to concur with the views expressed by the Delhi High Court in the case of *Great Eastern Exports* [2011] 332 ITR 14. For the same reason, we find it difficult to subscribe to the views expressed by the Kerala High Court in the case of *Olam Exports* [2011] 332 ITR 40.

In the result, we hold that section 80-1A(9) does not affect the computability of deduction under various provisions under heading C of Chapter VI-A, but it affects the allowability of deductions computed under various provisions under heading C of Chapter VI-A, so that the aggregate deduction under section 80-1A and other provisions under heading C of Chapter VI-A do not exceed 100 per cent of the profits of the business of the assessee. Our above view is also supported by the Central Board of Direct Taxes Circular No. 772 dated December 23, 1998 ([1999] 235 TR (St.) 35), wherein it is stated that section 80-1A(9) has been introduced with the view to prevent the taxpayers from claiming repeated deductions in respect of the same amount of eligible income and that too in excess of the eligible profits. Thus, the object of section 80-1A(9) being not to curtail the deductions computable under various provisions under heading C of Chapter VI-A, it is reasonable to hold that section 80-1A(9) affects

> allowability of deduction and not computation of deduction. To illustrate, if Rs. 100 is the profits of the business of the undertaking, Rs. 30 is the profits allowed as deduction under section 80-1A(1) and the deduction computed as per section 80HHC is Rs. 80, then, in view of section 80-1A(9), the deduction under section 80HHC would be restricted to Rs. 70, so that the aggregate deduction does not exceed the profits of the business."

5. The High Court of Delhi in ***Great Eastern Exports v. Commissioner of Income-Tax***[2] while interpreting the said provision has applied the test of literal construction and observed:-

> "We are not in a position to subscribe to the contention of the learned counsel for the assessees that where the Legislature intended to deduct the amount out of some other deduction a different phraseology was used as noticed above. This was sought to be demonstrated by refereeing to sub-section (5) of section 80HHB, sub-section (4) of section 80HHBA and sub-section (4) of section 80-1E etc. which provisions start with the use of a non obstante clause. Merely because section 80-1B is not worded in a similar fashion that would not

[2] [2011] 332 ITR 14 (Delhi)

> mean that we have to do violence to the plain language used in that provision, which is capable of only one meaning. A particular section of an enactment, the intention of which is otherwise manifest, cannot be read by adopting such an insidious approach, by referring to other sections. It is well known that the Legislature adopts different ways and means in order to achieve its goal and there is no justification for insistence on identical language. Likewise, as rightly pointed out by the Special Bench of the Tribunal, the notice and objects of accompanying reasons are only an aid to construction. Such aid to construction is needed when a literal reading of the provision leads to an ambiguous result or absurdity."

6. To appreciate the controversy it is absolutely necessary to understand the scheme of the Act and the purpose and the schematic impact of the provisions which are required to be interpreted in the context of Chapter in which they occur.

7. The Income Tax Act, 1961 (for short, "the Act") is arranged chapter-wise. Chapter I deals with preliminary definitions, subject to the context in issue. Chapter II gives

contours of the charge for levy of income tax and ambit and scope of total income and certain other matters. Chapter III relates to incomes, which do not form part of the total income at all. Chapter IV relates to computation of total income under different sources, i.e., six sub heads, which have been divided into parts (A) to (F), Chapter V deals with income of other persons, which are to be included in the assessee's total income. Chapter VI postulates aggregation of income from different sources or set off or carry forward of loss computed under different sources and to the next assessment year. Chapter VIA, with which we are concerned, deals with deductions to be made in computing total income. The said Chapter is divided into four parts namely, A to D. The said Chapter becomes operative on reaching the last stage of computation of income from different sources as per the provisions of Chapter I to VI. It is to be borne in mind that each chapter deals with independent subject matters at different stages. In other words, before reaching the stage of

invoking provisions of Chapter VIA, the assessee is required to work out the gross total income by applying the provisions upto the stage of Chapter VI. It is in this context that in part A of Chapter VIA under the heading "General" it is postulated in sub-section(1) to Section 80A that an assessee shall be allowed from his gross total income in accordance with and subject to the conditions of this Chapter, the deductions specified in Sections 80C to 80U. As per mandate of sub-section (2) to Section 80A, the aggregate amount of such deductions in Chapter VIA cannot exceed the gross total income of the assessee. Sub-section (3) stipulates that where an assessee is an association of persons or body of individuals to whom specified deductions have been allowed, then no deduction under the specified section shall be allowed in relation to share of such member of association of the persons or body of individuals.

8. Having stated the scheme as is reflective from the Chapter, it is necessary to reproduce Section AB which is relevant. It reads as follows:-

> "Deductions to be made with reference to the income included in the gross total income.
>
> 80AB. Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C.- Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income"."

The aforesaid section stipulates that notwithstanding anything contained in Sections 80C to 80U for the purpose of computing deduction under the aforesaid section, the amount of income of that nature as computed in accordance with the

provisions of the Act before making any deduction, shall alone be deemed to be the income derived or received by the assessee and included in his gross total income. The section, a non-obstante provision, overriding any section in part 'C' and postulates that deduction under each section shall be separately computed in respect of income of that nature, which is received or derived by the assessee and included in the gross total income. This provision is significant and accepts that an assessee may be entitled to multiple deductions under Section 80C to 80U, when conditions precedent stipulated in the section are satisfied.

9. The expression 'gross total income' has been defined in sub-section(5) to Section 80B and it reads as under:-

> "80B. In this Chapter-
>
> (5) "gross total income" means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter;"

On a conjoint and harmonious reading of Sections 80AB and 80B(5), it is apparent that once 'gross total income' is computed in accordance with the provisions of the Act but before making any deduction under the provisions of Sections 80C to 80U. Gross total income is computed by applying provisions upto Chapter VI, without or before making any deduction under Sections 80C to 80U, but the quantum of income which qualifies for deduction under Sections 80C to 80U would be amount of income of that nature, derived or received by the assessee.

10. As I perceive, there is no difficulty to this extent. The difficulties arise when there are overriding provisions, which tend to control a deduction, because deduction has been allowed in another provision. For example, an assessee may be entitled to multiple deductions, such as under Section 80J, which relates to deduction in respect of profits and gains from duly established industrial undertakings or ships or hotel

business in certain cases; under Section 80HH which relates to deduction in respect of profits and gains derived from newly established industrial undertakings or hotel business in backward areas; under Section 80HHC which relates to deduction in respect of profits and gains derived from exports outside India of goods and merchandise; under Section 80HHD which relates to deduction herein an assessee is engaged in the business of hotel or tour operator and has earning in convertible foreign exchange, etc. Thus, when an assessee qualifies for deduction under separate sections, which could be on percentage of profits or earnings, controversy can arise. The contours or scope of Chapter VIA in such situations was noticed by this Court in ***Joint CIT v. Mandideep Engineering and Packaging Industries Private Limited***[3], and the following observations were made:-

> "1. The point involved in the present case is whether sections 80HH and 80-I of the Income-tax Act, 1961, are independent of each other and therefore a new

[3] (2007) 292 ITR 1 (SC)

industrial unit can claim deductions under both the sections on the gross total income independently or that deduction under section 80-I can be taken on the reduced balance after taking into account the benefit taken under section 80HH.

2. The Madhya Pradesh High Court in J.P. Tobacco Products P. Ltd v. CIT reported in [1998] 299 ITR 123 took the view that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80-I on the gross total income. Against this judgment a special leave petition was filed in this court which was dismissed on the ground of delay on July 21, 2000 (see [2000] 245 ITR (St.) 71). The decision in J.P. Tobacco Products P. Ltd. [1998]229 ITR 123 (MP) was followed by the same High Court in the case of CIT v. Alpine Solvex P. Ltd. in I.T.A. No. 92 of 1999 decided on May 2, 2000. Special leave petition against this decision was dismissed by this court on January 12,2001, (see [2001] 247 ITR (St.) 36). This view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgments. See CIT v. Nima Specific Family Trust reported in [2001] 248 ITR 29 Bom ; CIT v. Chokshi Contacts P. Ltd. [2001] 251 ITR 587 (Raj); CIT v. Amod Stamping [2005] 274 ITR 176 (Guj); CIT v. Mittal Appliances P. Ltd [2004] 270 ITR 65 (MP); CIT

v. Rochiram and Sons [2004] 271 ITR 444 (Raj); CIT v. Prakash Chandra Basant Kumar [2005] 276 ITR 664 (MP); CIT v. S.B. Oil Industries P. Ltd [2005] 274 ITR 495 (P&H); CIT v. SKG Engineering P. Ltd. [2005] 119 DLT 673 and CIT v. Lucky Laboratories Ltd. [2006] 200 CTR (305).

3. Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions against the judgments of different High Courts following the view taken by the Madhya Pradesh High Court, we do not find any merit in this appeal. The Department having accepted the view taken in those judgments cannot be permitted to take a contrary view in the present case involving the same point. Accordingly, the civil appeal is dismissed. No costs."

11. For the purpose of clarity, I would note that the Court upheld the view taken by the Madhya Pradesh High Court in ***J.B. Tobacco Products Private Limited v. CIT***[4], holding that no provision has been made in Section 80I to provide for deduction of the gross total income computed as per the

[4] (1998) 229 ITR 123

mandate of Section 80AB read with Section 80B(5), towards deduction allowed under Section 80HH for the purpose of allowing deduction under Section 80I. Reference was made to sub-section (9) of Section 80HH as it then existed and was applicable before 1st, April, 1981 as it had made reference only to Section 80J. Thus it was held that sub-section (9) to Section 80HH by itself meant that deduction allowed under Section 80HH was to be reduced from the 'gross total income' for granting benefit under Section 80J. Therefore, benefit under Section 80I was to be granted on 'gross total income' and not on the income reduced by the amount allowed under Section 80HH. Section 80HH and 80I operate independently and the deductions have to be allowed independently subject to the condition that total amount of deduction under Chapter VIA cannot exceed the 'gross total income'. In other words, the gross total income on which deduction under Section 80HH or 80I would be computed with reference to the "gross total income" without reducing from it deduction permitted under

Section 80HH or 80I or for that matter under any of the sub-sections under Section 80C or 80U.

12. It is beyond cavil that the aforesaid legal position continued to exist up to 31st March, 1999. With effect from 1st April, 1999, amendments were made by inserting sub-section (9) to Section 80IA and sub-section 13 to Section 80IB. These provisions read as under:-

> "80-IA. (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 incomes*", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.
>
> 80-IB. (13) The provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible business under this Section."

13. In the present set of appeals, I am dealing with the provisions after 1st April, 1999, i.e., post amendment provisions and the question raised is whether deduction allowed under Section 80IA is to be reduced from the gross profits while computing deduction under Section 80HHC. The controversy arises because the assessees herein are entitled to deduction both under Section 80IA, which is restricted to the stipulated percentage of profits and gains derived from specified business, and under Section 80HHC again stipulated percentage of profits derived from exports of goods and merchandise are entitled for deduction. Section 80HHC specifically prescribes a formula or method for computing the said deduction in sub-section (3), which at present reads as follows:-

> "80HHC. (3) For the purposes of sub-section(1), -
>
> (a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business,

the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;

(c) where the export out of India is of goods or merchandise manufactured or processed by the assessee and of trading goods, the profits derived from such export shall, -

(i) in respect of the goods or merchandise manufactured or processed by the assessee, be the amount which bears to the adjusted profits of the business, the same proportion as the adjusted export turnover in respect of such goods bears to the adjusted total turnover of the business carried on by the assessee; and

(ii) in respect of trading goods, be the export turnover in respect of such trading goods as reduced by the direct and indirect costs attributable to export of such trading goods:

Provided that the profits computed under clause (a) or clause (b) or clause (c) of this sub-section shall be further increased by the amount which bears to ninety

per cent of any sum referred to in clause (iii*a*) (not being profits on sale of licence acquired from any other person), and clauses (iii*b*) and (iii*c*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assesse:

Provided further that in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iii*d*) or clause (iii*e*), as the case may be, of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee:

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iii*d*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the

assessee, if the assessee has necessary and sufficient evidence to prove that, -

(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme:

Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent of any sum referred to in clause (iii*e*) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that, -

(a) he had an option to choose either the duty drawback or the Duty Free Replenishment Certificate, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit

allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme.

Explanation. – For the purposes of this clause, " rate of credit allowable" means the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme calculated in the manner as may be notified by the Central Government:

Provided also that in case the computation under clause *(a)* or clause *(b)* or clause *(c)* of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent of-

(a) any sum referred to in clause *(iiia)* or clause *(iiib)* or clause *(iiic)*, as the case may be, or

(b) any sum referred to in clause *(iiid)* or clause *(iiie)*, as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or third or the fourth proviso, as the case may be,

the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

Explanation. – For the purposes of this sub-section, -

(a) “adjusted export turnover” means the export turnover as reduced by the export turnover in respect of trading goods;

(b) “adjusted profits of the business” means the profit of the business as reduced by the profits derived from the business of export out of India of trading goods as computed in the manner provided in clause (b) of sub-section (3);

(c) “adjusted total turnover” means the total turnover of the business as reduced by the export turnover in respect of trading goods;

(d) “direct costs” means costs directly attributable to the trading goods exported out of India including the purchase price of such goods;

(e) “indirect costs” means costs, not being direct costs, allocated in the ratio of the export turnover in respect of trading goods to the total turnover;

(f) “trading goods” means goods which are not manufactured or processed by the assessee.”

14. As is manifest, deduction under sub-section (a) is computed by ascertaining eligible profits, which is the profits of business in the same proportion as the export turnover in

respect of such goods, bears to the total turnover of business. A separate formula is prescribed under clause (b) of sub-section (3) to Section 80HHC in case of a trader exporter and under clause (c) in respect of an assessee, who is both a manufacturer/processor and a trader exporter. The Section is a detailed one and provides complete method and mechanism to compute deduction under Section 80HHC.

15. It is in the context of Section 80HHC that sub-section (9) to Section 80I has come up for interpretation. There is no dispute that sub-section (9) to Section 80I would be applicable as the assessee would be entitled to deduction under Section 80IA as well as under Section 80HHC. The contention of the Revenue is that the said sub-section mandates that deduction under Section 80HHC has to be computed not only on the profits of business as reduced by the amounts specified in clause (baa) and sub-section (4)(B) of Section 80HHC but by also reducing the amount of profit and gains allowed as a

deduction under Section 80IA(1) of the Act. In other words, the gross total income eligible for deduction under Section 80HHC would be less or reduced by the deduction already allowed under Section 80IA. Thus, the gross total income eligible for deduction would not be the gross total income as defined in sub-section (5) to Section 80B read with Section 80B, but would be the gross total income computed under sub-section (5) to Section 80B read with Section 80AB less the deduction under Section 80IA. An example will make position clear. Supposing an assessee has gross total income of Rs.1,000/- and is entitled to deduction under Sections 80IA and 80HHC and the deduction under Section 80IA is Rs. 300/-, then the gross total income of which deduction under Section 80HHC is to be computed would be Rs. 700/-, and not Rs. 1,000/-.

16. On the other hand, the case of the assessee is that the gross total income would not undergo a change or reduction

for the purpose of Section 80HHC. The two deductions will be computed separately, without the deduction allowed under Section 80IA being reduced from the gross total income for computing the deduction under Section 80HHC. The reason being that sub-section (9) to Section 80IA does not affect computation of deduction under Section 80HHC, but postulates that the deduction computed under Section 80HHC so aggregated with the deduction under Section 80IA does not exceed the profits of the business.

17. The High Court of Bombay in the case of ***Associated Capsules Private Ltd*** (supra) has accepted the contention of the assessee observing and recording the following reasons:-

> "29. Section 80-IA(9) consists of three parts:
>
> First part where any amount of profits and gains of an undertaking/enterprise is claimed and allowed under section 80-IA(1) for any assessment year, then
>
> Second part deduction to the extent of profits and gains allowed under section 80-IA(1) shall not be

allowed under any other provisions under heading C of Chapter VI-A of the Act; and

Third part in no case the deduction allowed shall exceed the profits and gains of the business of undertaking/enterprise.

30. The dispute in the present case is, whether the second part of section 80-IA(9) seeks to disturb the mechanism of computing the deduction provided under section 80HHC(3) of the Act? The second part of section 80-IA(9) provided that the deduction to the extent of profits allowed under section 80-IA(1) shall not be allowed under any other provisions. It obviously means that the deductions that are allowable under other provisions under heading C of Chapter VI-A would be allowed to the extent of profits as reduced by the profits allowed under section 80-IA(1). The second part of section 80-IA(9) does not even remotely refer to the method of computing deduction under other provisions under heading C of Chapter VI-A. Thus, section 80-IA(9) seeks to curtail allowance of deduction and not computability of deduction under any other provisions under heading C of Chatper VI-A of the Act.

31. How to compute deduction allowable under section 80HHC(1) is set out in section 80HHC(3). In the case of a manufacturer-exporter, section 80HHC(3)(a)

provides that the deduction under section 80HHC(1) has to be computed as per the formula:

32. Clause (baa) in section 80HHC defines the term "profits of the business" for the purposes of section 80HHC to mean the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by the amounts specified therein. Therefore, in the case of a manufacturer-exporter, deduction under section 80HHC(1) is statutorily required to be computed on the profits of the business as reduced by the amounts specified in clause (baa) of section 80HHC. Unless, it is specifically provided by the statute, the profits of the business for the purpose of section 80HHC cannot be reduced by any amount save and except the amount specified in clause (baa) of section 80HHC itself. Section 80-IA(9) of the Act does not expressly or impliedly provide that the amount of profits allowed as deduction under Section 80-IA(1) should be reduced from the profits of the business for the purpose of computing deduction under section 80HHC or computing deduction under any other provisions in heading C of Chapter VI-A and, therefore, the contention of the Revenue to that effect cannot be accepted.

33. In the case of a trade-exporter, section 80HHC(3)(b) provides that the deduction under section 80HHC(1) has to be computed on the export turnover reduced by the direct costs and indirect costs attributable to the goods or merchandise exported by the assessee. The argument of the Revenue that under section 80-IA(9) the amount of profits allowed under section 80-IA has to be deducted from the profits of business while computing deduction under section 80HHC is accepted, then the section becomes unworkable, because in the case of a trader-exporter, the deduction under section 80HHC is computed on the exporter turnover and not on the profits of the business. The words "export turnover" and "profits of business" are separately defined under section 80HHC. Therefore, in the case of a trader-exporter, section 80-IA(9) can be applied only after the deduction under section 80HHC(3)(b) is computed. Similarly, in the case of a manufacturer/processor-exporter, section 80-IA(9) would be applicable while allowing the deduction computed under section 80HHC(3)(a) of the Act.

34. If the words used in section 80-IA(9) were "shall not qualify", then, probably it could be said that the Legislature intended to affect the quantum of deductions computable under other provisions under heading C of Chapter VI-A, because the amount that qualifies for deduction alone forms the basis for

computing the deduction. The word "qualify" is an expression relatable to the computation of deduction. The word "allowed" is relatable to allowing the deduction that is computed. The word "allowed" cannot be equated with the word "qualify". Since Section 80-IA(9) uses the words "shall not be allowed", in our opinion, the section seeks to restrict the allowance of deduction and not the computation of deduction under any other sections under heading C of Chapter VI-A of the Act.

35. Wherever the Legislature intended that the deduction allowed under one section should affect the computation of deduction under other provisions of the Act, the Legislature has expressly used words to that effect. It may be noted that sections 80HHD(7) and 80-IA(9) (presently 80-IA(9)) were introduced by Finance (No.2) Act, 1988, with effect from April 1, 1999. Section 80HHD (7) provides that the deduction allowed under section 80HHD (1) shall not qualify to that extent for deduction under any other provisions of Chapter VI-A under the heading C, whereas, section 80-IA(9A) provides that the deduction allowed under section 80-IA(1) shall not be allowed under any other provisions of Chapter VI-A under heading C. Similarly, in section 80-IC(5), the words used are that notwithstanding anything contained in any other provision of the Act, in computing the total income of the assessee, no deduction shall be allowed under any

other section contained in Chapter VI-A or section 10A or section 10B in relation to the profits and gains of the undertaking. Thus, the Legislature has used specific words whenever it intended to affect the computation of deduction. As the words used in section 80-IA(9) relate to allowance and not computation of deduction, it cannot be inferred that section 80-IA(9) is inserted with a view to affect computation of deduction under any other provisions under heading C of Chapter VI-A.

36. It is well established in law that the language of the statute must be read as it is, and the statute must not be read by adding or substituting the words unless it is absolutely necessary to do so. Since section 80-IA(9) uses the words "shall not be allowed", it is not permissible to read section 80-IA(9) by substituting the above words with the words "shall not qualify" or by adding the words "shall not be allowed in computing" the deduction under any other provisions under heading C of Chapter VI-A of the Act. When the plain and simple meaning of section 80-IA(9) can be ascertained from the words used in the section, it would not be proper to construe the section by substituting or adding the words as suggested by the Revenue".

18. Delhi High Court, on the other hand, in ***Great Eastern Exports v. Commissioner of Income-Tax***[5] has held as under:-

> "44. The expressions in these provisions are very crucial which are "deduction to the extent of such profits" and the word "and" occurring therein. The first expression very clearly signifies that if an assesses is claiming benefit of deduction of a particular amount of profits and gains under section 80-IA, to that extent profits and gains are to be reduced while calculating the deduction under the heading C of Chapter VI-A of the Act. Further the word "and" is disjunctive which would mean that the other provision is independent of the first one namely total deductions should not exceed the profits and gains in a particular year. Even a layman who has some proficiency in English would understand the meaning of this provision in the manner we have explained above. It would, therefore, be clear that this provision aims at achieving two independent objectives delineated above. It cannot be limited to the second objective alone thereby annihilating the first altogether and making it otiose. If we accept the contention of learned counsel for the assesses, it would lead to this result which has to be avoided.

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> 45. Law on interpretation is clear. If the language of the statute is plain and capable of one and only one meaning, that obvious meaning is to be given to the said provision. Rules of interpretation are applied only if there are ambiguities when the purpose of interpretation is to ascertain the intention of the law i.e., mens legis, it is based on assertion by adopting plain meaning of the statute in the absence of any ambiguity."

19. The aforesaid judgment gives the stamp of approval to the opinion expressed by the Special Bench of the Tribunal in ***Assistant Commissioner of Income-tax v. Ragini Garments***[6] wherein it has been observed that several sections like 80HHA, 80HHA(5) and 80HHA(6) provide for modification or change of manner and mode of computation or preferential treatment of one deduction over the other. These sections have to be read harmoniously. Though Section 80AB starts with the non-obstante clause, the provisions of Section (9A) to Section 80IA would override. The Delhi High Court has accepted the said interpretation and observed that the two

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6 [2007] 294 ITR (AT) 15 (Chennai)

provisions are required to be read harmoniously, for Section 80-IA(9) should not be treated as a redundant provision as it was introduced for the purpose of achieving a clear objective. Consequently, it has held that the deduction under Section 80HHC cannot be computed without reference to the bar under Section 80IA(9).

20. There is no doubt that Section 80AB and sub-section (9) to Section 80IA have to be harmoniously construed and read together. There cannot be any trace of doubt that the second limb of Section 9 to Section 80IA has been enacted to prevent cascading effect of deductions under Section 80IA and 80HHC. There was already a cap or the upper limit stipulated in sub-section(2) to Section 80IA that the deductions cannot exceed the gross total income of the assessee. However, Section 9 to Section 80IA stipulates that in no case deduction shall exceed profits and gains of such eligible business of undertaking and enterprise. The said provision does not make

a reference to the gross total income but it refers to the profits and gains of such eligible business of undertaking and enterprise. Thus read, it cannot be said that the last part of sub-section (9) to section 80IA would be rendered meaningless being a mere reproduction of sub-section(2) to Section 80A. The two provisions operate independently. The aforesaid aspect has been overlooked by the Delhi High Court while emphasizing that the word "and" is disjunctive. There cannot be any doubt that the last part of Section 80IA(9) has its meaning and object, but it is not necessary to read the same to curtail or reduce profit or gains of business by the deduction allowed under Section 80IA. This aspect is highlighted in ***Associated Capsules Private Limited*** (supra) by the High Court of Bombay in the following paragraphs:-

> "23. As per section 80A(2) in Part A of Chapter VI-A, the aggregate amount of deduction allowed under Chapter VI-A shall not exceed the gross total income. Thus, the overall deduction allowed under Chapter VI-A cannot exceed the gross total income. However, on noticing that several undertakings were availing of

deductions under Chapter VI-A within the overall limit of gross total income but exceeding the profits of the undertaking, the Legislature introduced sub-section (9A) in section 80-IA by the Finance (No.2) Act, 1998, with effect from April 1, 1999. By the Finance Act, 1999, section 80-IA(9A) has been renumbered as section 80-IA(9).

24. The object of amending section 80-IA by the Finance (No.2) Act, 1998, as is evident from the memorandum explaining the provisions in the Finance (No.2) Bill, 1998([1998] 231 ITR (St.) 252) is that it was noticed that certain assessees were claiming more than 100 percent deduction on the profits and gains of the same undertaking, when they were entitled to deductions under more than one section under heading C of Chapter VI-A. With a view to prevent the taxpayer taking undue advantage of the existing provisions of the Act, section 80-IA was amended by the Finance (No.2) Act, 1998, so that the deductions allowed under section 80-IA and various sections under heading C of Chapter VI-A are restricted to the profits of the business of the undertakings/enterprise."

21. The first part of sub-section (9) to Section 80IA refers to the computation of profits and gains of an undertaking or enterprise allowed under Section 80IA in any assessment year and the amount so calculated shall not be allowed as a deduction under any other provisions of this Chapter. It is in this context that the Bombay High Court has rightly pointed out that there is a difference between allowing a deduction and computation of deduction. The two have separate and distinct meanings. Computation of deduction is a stage prior and helps in quantifying the amount, which is eligible for deduction. Sub-section (9) to Section 80IA does not bar or prohibit the deduction allowed under Section 80IA from being included in the gross total income, when deduction under Section 80HHC(3) of the Act is computed. In this context it has been held that the expression "shall not be allowed" cannot be equated with the words "shall not qualify" or "shall not be allowed" in computing deduction. The effect thereof would be that while computing deduction under Section 80HHC, the

gross total income would mean the gross total income before allowing any deduction under Section 80IA or other sections of part C of Chapter VIA of the Act. But once the deduction under Section 80HHC has been calculated, it will be allowed, ensuring that the deduction under Section 80HHC and 80IA when aggregated do not exceed profits and gains of such eligible business of undertaking and enterprise.

22. As I find, the legislature has used the expression "shall not qualify" in Section 80HHB(5) and 80HHD(7), but the said expression has not been used in sub-section (9) to Section 80IA. The formula prescribed in sub-section (3) to Section 80HHC is a complete code for the purpose of the said computation of eligible profits and gains of business from exports of mercantiles and goods. It has reference to total turnover, turnover from exports in proportion to profits and gains from business in clause (a) and so forth under clause (b) and (c) of Section 80HHC(3) of the Act. In case the gross total

income is reduced or modified taking into account the deduction allowed under Section 80IA, it would lead to absurd and unintended consequences. It would render the formula under sub-section (3) to Section 80HHC ineffective and unworkable as highlighted in paragraph 33 of the decision in ***Associated Capsules Private Limited*** (supra) with reference to clause (b) of Section 80HHC(3). Even when I apply clause (a) and calculate eligible deduction under Section 80HHC, it would give an odd and anomalous figure. To illustrate, I would like to expound on the earlier example after recording that the gross total income of Rs.1,000/- was on assumed total turnover of Rs.10,000/- which includes export turnover of Rs.5,000/- and the deduction allowable under Section 80-IA was 30% and the deduction allowable under Section 80HHC was 80% of the eligible profits as computed under Section 80HHC(3). The stand of the Revenue is that without alteration or modification of the figures of total turnover and the export turnover, the gross total income would undergo a reduction

from Rs. 1,000/- to Rs. 700/- as Rs. 300/- has been allowed as a deduction under Section 80-IA. This would result in anomaly for the said figure would not be the actual and true figure or the true gross total income or profit earned on the total turnover including export turnover and, therefore, would give a somewhat unusual and unacceptable result. There is no logic or rationale for making the calculation in the said impracticable and unintelligible manner.

23. Recently, this Court in ***Jeyar Consultant and Investment Private Limited v. Commissioner of Income Tax, Madras***[7], dealing with the Assessment Year 1989-90, had examined sub-section (3)(b) to Section 80 HHC as it then existed on the question of computation of deduction, which has reference to figures of profit from business, export turnover and total turnover. The said clause applied to assessee who had turnover and income from business in India as well as from export business. The eligible profits from

[7] (2015) 7 SCC 705

exports under the clause were computed as a proportion which had reference to the three figures. Reversing the finding of the High Court, it was observed that insofar export business was concerned, the assessee therein had admittedly incurred loses and on the said factual position there was no doubt or debate. However, the assessee relying upon the formula prescribed in clause (b) to Section 80HHC(3) had contended that profits of business as a whole, i.e., profits earned from goods or merchandise within India, which outweighed the loses from exports, should be taken into consideration. Referring to the decisions in ***IPCA Laboratories Limited v. CIT***[8] and ***A.M. Moosa v. CIT***[9], the contention was rejected observing that the profits of business should be positive profits and not negative income or losses. It was observed that the formula prescribed in sub-section (3) clause (b) would not come into the picture, where it was an accepted case of the

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8 (2004) 12 SCC 742

9 (2007) 7 SCC 647

assessee that there were no profits from export business. Hence, when there were loses in export business, deduction under Section 80HHC would not be allowed.

24. The issue raised in the present case is entirely different. The assessee has made profits which are eligible and on which deduction is to be allowed under Sections 80HHC and 80IA.

25. Two other aspects need to be noticed. In ***Jeyar Consultant and Investment Private Limited*** (supra), the Court was dealing with the Assessment Year 1989-90 and sub-section (3) to Section 80HHC as it then existed and was applicable. The said sub-section had underwent substitution by Finance (No.1) Act, 1990 with effect from 1st April, 1991 and then again by Finance (No.2) Act, 1991 with effect from 1st April 1992. The first substitution may not be of material relevance for it was specified that the profits derived from exports were to be worked out in the same proportion with the sale proceeds received in, or brought into India in convertible

foreign exchange bear to the total sale proceeds of such goods or merchandise. However, the amendments made by Finance (No.2) Act, 1991 with effect from Assessment Year 1992-93 are substantial as the new provisions provides a detailed mechanism for computing profits from exports from trading goods and in case of mixed activity of manufacturing and trading. Sub-section(3) to Section 80HHC as enacted by the Finance (No.2) Act, 1991 and further amendments has been quoted in paragraph 15 above.

26. It may be noted that the second, third and fourth provisos to Section 80HHC(3) were inserted by Taxation Laws (Amendment) Act, 2005 with retrospective effect from 1st April, 1998. The fifth proviso was inserted by Taxation Laws (Amendment) Act, 2005 with retrospective effect from 1st April, 1992. Explanation to sub-section (3) would indicate that it defines different terms including “direct” and “indirect cost”,

"trading goods", "adjusted export turnover" and "adjusted profits of the business".

27. Finance (No.2) Act, 1991 with retrospective effect from 1st April, 1987 in the Explanation to the Section 80HHC defines the term "total turnover" and "profits of business" in clauses (ba) and (baa). They read as under:-

> "(ba) "total turnover", shall not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 2 (52 of 1962): Provided that in relation to any assessment year commencing on or after the 1st day of April, 1991, the expression "total turnover" shall have effect as if it also excluded any sum referred to in clauses (iiia), (iiib) and (iiic) of Section 28;
>
> (baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by –
>
> (1) ninety per cent of any sum referred to in clauses (iiia), (iiib) and (iiic) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges

or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assesses situate outside India;

[1 Inserted by the Finance (No.2 Act, 1991, w.e.f 1-4-1987.

2 Inserted by the Finance (No.2 Act, 1991, w.e.f 1-4-1992"]

28. The expression "profits of the business" as defined in clause (baa) of the Explanation to Section 80HHC of the Act was interpreted by the Court in ***ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai***[10], in the following manner:-

"11. Before we deal with the contentions of the learned counsel for the parties, we may extract Explanation (*baa*) to Section 80-HHC of the Act:
"*Explanation*.—For the purposes of this section,—

[10] (2012) 3 SCC 321

* * *

(*baa*) 'profits of the business' means the profits of the business as computed under the head 'Profits and Gains of Business or Profession' as reduced by —

(1) ninety per cent of any sum referred to in clauses (*iii-a*), (*iii-b*), (*iii-c*), (*iii-d*) and (*iii-e*) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;

12. Explanation (*baa*) extracted above states that "profits of the business" means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by the receipts of the nature mentioned in clauses (1) and (2) of Explanation (*baa*). Thus, profits of the business of an assessee will have to be first computed under the head "Profits and Gains of Business or Profession" in accordance with the provisions of Sections 28 to 44-D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such

> profits of business, different expenses which are allowable under Sections 30 to 44-D have to be allowed as expenses. After including such receipts of income and after deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head "Profits and Gains of Business or Profession" from which deductions are to be made under clauses (1) and (2) of Explanation (*baa*)."

29. Reliance was placed for the said interpretation on a decision of the Constitution Bench in ***Distributors (Baroda) (P) Limited v. Union of India***[11]**,** to observe:-

> "16. Similarly, Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in Explanation (baa), the words "receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits" will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head "Profits and Gains of Business or Profession" referred to in the first part of the Explanation (baa). Accordingly, if any quantum of any receipt of the nature mentioned in clause (1) of Explanation (baa) has not

[11] (1986) 1 SCC 43

been included in the profits of business of an assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt cannot be deducted under Explanation (baa) to Section 80HHC.

17. If we now apply Explanation (baa) as interpreted by us in this judgment to the facts of the case before us, if the rent or interest is a receipt chargeable as profits and 1 gains of business and chargeable to tax under Section 28 of the Act, and if any quantum of the rent or interest of the assesses is allowable as an expense in accordance with Sections 30 to 44D of the Act and is not to be included in the profits of the business of the assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt of rent or interest will not be deducted under clause (1) of Explanation (baa) to Section 80 HHC. In other words, ninety per cent of not the gross rent or gross interest but only the net interest or net rent, which has been included in the profits of business of the assessee as computed under the head "Profits and Gains of Business or Profession", is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business".

30. Referring to ***CIT v. K. Ravindranathan Nair***[12], it was observed that processing charges received by the assessee were held to be business turnover and included in profits and gains of business. As per Explanation (baa) it was observed that 90% of this income would have to be deducted. However, in ***Ravindranathan Nair*** (supra) the Court was not deciding whether 90% of the deduction was to be made from gross or net income.

31. Earlier decision in ***Topman Exports v CIT***[13] holds that not the entire amount on sale of DEPB, but the sale value less the face value will represent profit under Section 28(iii-d) and accordingly deduction under Section 80HHC should be computed.

32. The second aspect to be noticed is that in ***Jeyar Consultant and Investment Private Limited*** (supra) reference was made to ***IPCA Laboratories Limited*** (supra)

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12 (2007) 15 SCC 1

13 (2012) 3 SCC 593

and ***A.M. Moosa*** (supra) and it was noticed that in the said cases, the Court was concerned with two business activities both of which related to exports, one from export of self manufactured/processed goods and other from trading in goods. In other words, the Court was concerned only with income from exports and there was no domestic or in India turnover.

33. In view of the aforesaid analysis, I am of the considered opinion that the interpretation placed by the High Court of Bombay is correct and, accordingly, I dismiss the appeals preferred by the revenue and allow the appeals preferred by the assessees. There shall be no order as to costs.

.....J.
[DIPAK MISRA]

NEW DELHI
DECEMBER 10, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7427 OF 2012

ASST.COMMR.OF I.T BANGALORE ... APPELLANT(S)

VS.

M/S MICRO LABS LTD. ... RESPONDENT(S)

WITH

C.A. NO. 14295 OF 2015 @ S.L.P. (C) NO.6445 OF 2011, C.A. NO.14297 OF 2015 @ S.L.P. (C) NO.6829 OF 2011, C.A. NO.14298 OF 2015 @ S.L.P. (C) NO.6926 OF 2011, C.A. NO.14299 OF 2015 @ S.L.P. (C) NO.6938 OF 2011, C.A. NO.14300 OF 2015 @ S.L.P. (C) NO.8603 OF 2011, C.A. NO.14301 OF 2015 @ S.L.P. (C) NO.8879 OF 2011, C.A. NO.14302 OF 2015 @ S.L.P. (C) NO.8923 OF 2011, C.A. NO. 14303 OF 2015 @ S.L.P. (C) NO.10243 OF 2011, C.A. NO.14304 OF 2015 @ S.L.P. (C) NO.13992 OF 2011, C.A. NO.14305 OF 2015 @ S.L.P. (C) NO.17319 OF 2011, C.A. NO.14306 OF 2015 @ S.L.P. (C) NO.21221 OF 2011, C.A. NO.14307 OF 2015 @ S.L.P. (C) NO.21222 OF 2011, C.A. NO.14308 OF 2015 @ S.L.P. (C) NO.21224 OF 2011, C.A. NO.14309 OF 2015 @ S.L.P. (C) NO.22128 OF 2011, C.A. NO.14310 OF 2015 @ S.L.P. (C) NO.23918 OF 2011, C.A. NO.14311 OF 2015 @ S.L.P. (C) NO.24682 OF 2011, C.A. NO.14312 OF 2015 @ S.L.P. (C) NO.25006 OF 2011, C.A. NO.14313 OF 2015 @ S.L.P. (C) NO.25664 OF 2011, C.A. NO.14314 OF 2015 @ S.L.P. (C) NO.25755 OF 2011, C.A. NO.14315 OF 2015 @ S.L.P. (C) NO.25987 OF 2011, C.A.

NO.14316 OF 2015 @ S.L.P. (C) NO.25988 OF 2011, C.A. NO.14317 OF 2015 @ S.L.P. (C) NO.26002 OF 2011, C.A. NO.14318 OF 2015 @ S.L.P. (C) NO.26025 OF 2011, C.A. NO.14319 OF 2015 @ S.L.P. (C) NO.26246 OF 2011, C.A. NO.14320 OF 2015 @ S.L.P. (C) NO.26250 OF 2011, C.A. NO.14322 OF 2015 @ S.L.P. (C) NO.26418 OF 2011, C.A. NO.14323 OF 2015 @ S.L.P. (C) NO.26818 OF 2011, C.A. NO.14324 OF 2015 @ S.L.P. (C) NO.27270 OF 2011, C.A. NO.14325 OF 2015 @ S.L.P. (C) NO.28128 OF 2011, C.A. NO.14326 OF 2015 @ S.L.P. (C) NO.29796 OF 2011, C.A. NO.14327 OF 2015 @ S.L.P. (C) NO.31207 OF 2011, C.A. NO.14328 OF 2015 @ S.L.P. (C) NO.31208 OF 2011, C.A. NO.14329 OF 2015 @ S.L.P. (C) NO.33936 OF 2011, C.A. NO.14330 OF 2015 @ S.L.P. (C) NO.33938 OF 2011, C.A. NO.14331 OF 2015 @ S.L.P. (C) NO.227 OF 2012, C.A. NOS. 14332-14333 OF 2015 @ S.L.P.(C)NOS.907-908 OF 2012, C.A. NO.14334 OF 2015 @ S.L.P. (C) NO.909 OF 2012, C.A. NO.14335 OF 2015 @ S.L.P. (C) NO.910 OF 2012, C.A. NO.14336 OF 2015 @ S.L.P. (C) NO.931 OF 2012, C.A. NO. 14337 OF 2015 @ S.L.P. (C) NO.2291 OF 2012, C.A. NO.14338 OF 2015 @ S.L.P. (C) NO.2292 OF 2012, C.A. NO.14339 OF 2015 @ S.L.P. (C) NO.5762 OF 2012, C.A. NO.14340 OF 2015 @ S.L.P. (C) NO.6111 OF 2012, C.A. NO.14341 OF 2015 @ S.L.P. (C) NO.6677 OF 2012, C.A. NO.14342 OF 2015 @ S.L.P. (C) NO.8476 OF 2012, C.A. NO.14343 OF 2015 @ S.L.P. (C) NO.9472 OF 2012, C.A. NO.14344 OF 2015 @ S.L.P. (C) NO.12874 OF 2012, C.A. NO.14345 OF 2015 @ S.L.P. (C) NO.19923 OF 2012, C.A. NO.14346 OF 2015 @ S.L.P. (C) NO.34816 OF 2012, C.A. NO.14347 OF 2015 @ S.L.P. (C) NO.10591 OF 2013, C.A. NO.7847 OF 2012, C.A. NO.4544 OF 2013, C.A. NO.5341 OF 2013 AND C.A. NO.1890 OF 2015.

J U D G M E N T

In view of difference of opinion, the matters are referred to a larger Bench.

The Registry is directed to place the matters

before the Hon'ble the Chief Justice of India, so that the same can be referred to an appropriate Bench.

.....J.
[ANIL R. DAVE]

.....J.
[DIPAK MISRA]

New Delhi;
10th December, 2015.