IPCA LABORATORY LTD. A

v.

DEPUTY COMMISSIONER OF INCOME TAX, MUMBAI

MARCH 11, 2004

[S.N.VARIAVA AND H.K. SEMA, JJ.] B

Income Tax Act, 1961:

Section 80HHC—Income tax—AY 1996-97—Profits retained for export business—Deduction in respect of—Entitlement—Self-manufactured goods as well as trading goods—Export of—Total income—Computation of—Assessee, an Export House, exported goods which were self-manufactured as well as goods manufactured by supporting manufacturers i.e. trading goods—Assessee derived profit from export of self-manufactured goods and incurred loss from export of trading goods—Assessee had issued certificates of disclaimer in favour of supporting manufacturers—Assessee claimed deduction of the said profit—Assessing Officer disallowed the deduction in view of the disclaimer and held that there was a net loss from export of goods—Correctness of—Held: The word "profit" in S. 80HHC(1), 3(a) and 3(b) means a positive profit—In calculating the positive profit both the profits and the losses from the export of self-manufactured goods as well as trading goods have to be taken into consideration—If there is a net profit, assessee is entitled to deduction—If there is a net loss assessee is not entitled to deduction. C D E

Section 80AB—Scope and ambit of—Held: S. 80AB prevails over all other Sections in Chapter VIA of the Act—Hence, S. 80HHC would be governed by S. 80AB. F

Section 80HHC(1) proviso—Disclaimer—Effect on turnover—Held: A disclaimer enables an export house to pass on deduction—It, in no way, reduces the turnover of an export house—In computing the total income the entire turnover is taken into account even though there is a disclaimer. G

Words and Phrases:

"Profit"—Meaning of—In the context of S. 80HHC of the Income Tax Act, 1961.

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A The appellant, an export house, exported goods that were self-manufactured as well as goods manufactured by supporting manufacturers i.e. trading goods. The appellant derived a profit from the export of self-manufactured goods and incurred a loss from the export of trading goods. The appellant claimed a deduction under Section 80HHC of the Income Tax Act, 1961 in respect of the said profit for the assessment year 1996-
B 97. It was found that the appellant had issued certificates of disclaimer in favour of the supporting manufacturers in respect of the entire export of trading goods. The Assessing Officer, therefore, held that there was a net loss from export of goods and disallowed the deduction. The Commissioner (Appeals), the Income Tax Appellate Tribunal and the High Court
C dismissed the appeals filed by the appellant. Hence the appeal.

The following question arose before the Court:-

Whether an assessee is entitled to deduction under Section 80HHC of the Income Tax Act, 1961 in respect of the profit by ignoring the loss?

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Dismissing the appeal, the Court

HELD: 1. Section 80HHC of the Income Tax Act, 1961 has been incorporated with a view to providing incentive to the export houses. Even though a liberal interpretation has to be given to such a provision the
E interpretation has to be as per the wordings of this Section. If the wordings of a Section are clear then benefits, which are not available under that Section, cannot be conferred by ignoring or misinterpreting the words in that Section. [1086-C-D]

2. The word "profit" in section 80HHC(1) and Sections 80HHC(3)(a)
F and 3(b) means a positive profit. In other words if there is a loss then no deduction would be available under Section 80HHC(1) or 3(a) or 3(b). In arriving at the figure of positive profit, both the profits and losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to a deduction. If the net figure is a loss then the assessee
G will not be entitled to a deduction. Section 80HHC(3)(c) deals with the cases where the export is of both self-manufactured goods as well as trading goods. A plain reading of Section 80HHC(3)(c) shows that "profits from such exports" has to be profits of exports of self-manufactured goods plus profits of exports of trading goods. The profit is to be calculated in the manner laid down in Section 80HHC(3)(c)(i) and (ii). The opening
H words "profit derived from such exports" together with the word "and"

clearly indicate that the profits have to be calculated by counting both the exports. It is clear from a reading of Section 80HHC(3)(1) that a deduction can be permitted only if there is a positive profit in the exports of both self-manufactured goods as well as trading goods. If there is a loss in either of the two then that loss has to be taken into account for the purposes of computing the profits. [1086-F-H; 1087-A] A B

Sea Pearl Industries v. *CIT* (2001) Vol. 247 ITR 578 and *Bajaj Tempo Ltd.* v. *CIT,* (1992) Vol. 196 ITR 188, referred to.

3. Under Section 80HHC(3)(1) the deduction is to be given in computing the total income of the assessee. In computing the total income of the assessee both the profits as well as the losses will have to be taken into consideration. [1087-B] C

4.1. Section 80AB is also in Chapter VI-A of the Act. It starts with the words "where any deduction is required to be made or allowed under any Section of this Chapter". This would include Section 80HHC. Section 80AB further provides that "notwithstanding anything contained in that Section". Thus Section 80AB has been given an overriding effect over all other Sections in Chapter VI-A. Section 80HHC does not provide that its provisions are to prevail over Section 80AB or over any other provision of the Act. Section 80HHC would thus be governed by Section 80AB. [1087-F] D E

CIT v. *Shirke Construction Equipments Ltd.* (2000) Vol. 246 ITR 429 (Bom.) and *CIT* v. *Smt. T.C. Usha,* 2000 (137) Taxman 297 (Ker.), overruled.

4.2. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration. [1087-G] F

5. Even under Section 80HHC(3)(c)(i) the profit is to be adjusted profit of business. The adjusted profit of the business means a profit as reduced by the profit derived from the business of exports out of India of trading goods. Thus in calculating the profits, under Section 80HHC(3)(c)(i), one necessarily has to reduce the profits under Section 80HHC(3)(c)(ii). The term 'profit' means positive profit. Thus if there is loss then those losses in export of trading goods have to be adjusted. They cannot G H

A be ignored. A plain reading of Section 80HHC makes it clear that in arriving at profits earned from export of both self-manufactured goods and trading goods, the profits and losses in both the trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction under Section 80HHC(i). If there is a loss he will not be entitled to any deduction. [1088-A-C]

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6. It is not necessary that the word "profit" in Section 80HHC must have the same meaning in the entire Section. The meaning of the word "profit" will depend on the context in which it is used. In Section 80HHC(1) it is admittedly used to indicate positive "profit" because the C deduction will only be of a positive profit. Section 80HHC(3) provides how the profits are to be worked out in computing the total income. For purposes of such computation both profit and losses have to be taken into account. Thus the word "profit" in Section 80HHC(3) will mean profits after taking into account losses, if any. More importantly, the term "profit" in Section 80HHC(3)(1) and (3) means a positive profit worked out after D taking into consideration the losses, if any. Thus the word "profit" has the same meaning in Section 80HHC (1) and (3). [1088-D-F]

7. The proviso to Section 80HHC(1) enables a disclaimer only to enable the export house to pass on deductions. It, in no way, reduces the turnover of the export house. In computing the total income, the entire E turnover is taken into account even though there is a disclaimer. Even after disclaimer the turnover has remained the turnover of the export house i.e. the appellant. The disclaimer is only for purposes of enabling the export house to pass on the deduction to the supporting manufacturer. It follows that if no deduction is available, because there is a loss, then the export F house cannot pass on or give credit of such non-existing deduction to a supporting manufacturer. [1089-B-D]

CIT v. *Harprasad and Co. P. Ltd.,* (1975) Vol. 99 ITR 118, held inapplicable.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1697 of 2003.

From the Judgment and Order dated 2.7.2001 of the Bombay High Court in I.T.A. No. 131 of 2001.

H Sohrab E. Dastur, F.V. Irani and Rustom B. Hathikhanawala for the

Appellant. A

Rajiv Tyagi, Tufail A. Khan and B.V.Balram for the Respondents.

The Judgment of the Court was delivered by

S. N. VARIAVA, J. This Appeal is against a Judgment dated 2nd July, 2001 passed by the Bombay High Court. B

Briefly stated the facts are as follows:

The Appellants are a Export House. They hold a certificate issued by the Chief Controller of Imports and Exports. For the Assessment Year 1996-97 the Appellants filed a return of income declaring Nil income. It is an admitted position that the taxable income, before the deductions under Chapter VIA, was Rs. 4.39 crores. However, against this taxable income the Appellants claimed various deductions. One such deduction was under Section 80 HHC for Rs. 3.78 crores. During the assessment proceedings it was found that the Appellants were exporting goods which were self manufactured as well as goods manufactured by supporting manufacturers i.e. trading goods. It was found that the sum of Rs. 3.78 crores, which had been claimed as a deduction, was the profit from exports of self manufactured goods. It was found that from the exports of trading goods there was a loss of Rs. 6.86 crores. It was found that the Appellants had issued certificates of disclaimer in favour of the supporting manufacturers in respect of the entire export of trading goods. The Assessing Officer therefore held that there was a net loss from export of goods and disallowed the deduction of Rs. 3.78 crores. The Commissioner (Appeals) dismissed the Appeal filed by the Appellants on 11th October, 1999. On 29th December, 2000 the Income Tax Appellate Tribunal dismissed the Second Appeal. By the impugned Judgment the Bombay High Court has dismissed the Appeal filed under Section 260A of the Income Tax Act. C D E F

The question for consideration is whether the Appellants are entitled to deduction under Section 80HHC in respect of the sum of Rs. 3.78 crores by ignoring the loss of Rs. 6.86 crores. It therefore becomes necessary to look at Section 80HHC of the Income Tax Act. The relevant portions of Section 80HHC reads as follows: G

> "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 H

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) Where the assessee, being a supporting manufacturer, has during the previous year, sold goods or merchandise to any Export House or Trading House in respect of which the Export House or Trading House has issued a certificate under the proviso to sub-section (1), 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 sale of goods or merchandise to the Export House or Trading House in respect of which the certificate has been issued by the Export House or Trading House.

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(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 (iiia) (not being profits on sale of a licence acquired from any other person), and clauses (iiib) and (iiic), of section 28, the same proportion as the export turnover bears to the total turnover of 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 profits 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;

A (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
B the total turnover;

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

(3A) For the purposes of sub-section (1A), profits derived by a supporting manufacturer from the sale of goods or merchandise shall
C be, -

(a) in a case where the business carried on by the supporting manufacturer consists exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the profits of the business;
D

(b) in a case where the business carried on by the supporting manufacturer does not consist exclusively of sale of goods or merchandise to one or more Export Houses or Trading Houses, the amount which bears to the profits of the business the same proportion as the turnover in respect of sale to the respective
E Export House or Trading House bears to the total turnover of the business carried on by the assessee.

(4) The deduction under sub-section (1) shall not be admissible unless the assessee furnishes in the prescribed form, along with the return of income, the report of an accountant, as defined in the Explanation
F below sub-section (2) of section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section."

Mr. Dastur submitted that Section 80 HHC appears in Chapter VIA of
G the Income Tax Act. He submitted that Chapter VIA provides for deduction to be made in computing the total income. He took us through the various provisions of Chapter VIA and submitted that these provisions were enacted for encouraging business out of India so that foreign exchange is earned. He submitted that these provisions are meant to be an incentive for earning foreign exchange. He submitted that with this aim in mind deductions were
H given (a) under Section 80 HHB for profits from projects outside India; (b)

under Section 80 HHC for profits from exports; (c) under Section 80 HHD for hotels and tour operators; (d) under Section 80 HHE from exports of computer software; (e) under Section 80 HHF from exports or transfer of film software; (f) under Section 80-O for royalties etc. from foreign enterprises; (g) under Section 80R for deduction of remuneration from foreign sources of professors, teachers etc.; (h) under Section 80RR for deduction of professional income from foreign sources and (i) under Section 80RRA for remuneration received for services rendered outside India. He submitted that these incentives were given as the Parliament considered earning of foreign exchange to be in national interest and in the interest of our society. Mr. Dastur submitted that as the Appellants were exporting goods manufactured by them as well as trading goods the deduction under Section 80HHC had to be computed in the manner set out in Sub-section (3)(c). He submitted that the provision having been enacted to give an incentive for earning foreign exchange the Section must be given an interpretation which would further that object. He pointed out that from the export trade the Appellants had brought in foreign exchange to the tune of approximately Rs. 81,62,49,276.

Mr. Dastur relied upon the case of *Sea Pearl Industries* v. *Commissioner of Income Tax* reported in (2001) Vol. 247 ITR 578. In this case the Appellant (therein) was not an export house and therefore could not avail of special facilities granted to export houses. The Appellant however entered into an agreement with an export house under which the Appellant exported sea food in the name of the export house against Purchase Orders placed on the export house by foreign buyers. The question was whether the Appellant (therein) could claim deduction under Section 80HHC in respect of exports made by them on account of the export house. This Court held that the object of Section 80HHC was to grant an incentive to the earners of foreign exchange and that the matter therefore had to be considered with reference to this object. Section 80HHC at the relevant time read as follows:

> "80HHC. (1) Where the assessee, being an Indian company or a person (other than a company), who is resident in India, exports out of India during the previous year relevant to an assessment year 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, the following deductions, namely:-
>
> (a) a deduction of an amount equal to one per cent of the export turnover of such goods or merchandise during the previous year; and

A (b) a deduction of an amount equal to five per cent of the amount by which the export turnover of such goods or merchandise during the previous year exceeds the export turnover of such goods or merchandise during the immediately preceding previous year.

(2)(a) This section applies to all goods or merchandise (other B. than those specified in clause (b)) if the sale proceeds of such goods or merchandise exported out of India are receivable by the assessee in convertible foreign exchange."

This Court negatived the argument that, because the Appellant (therein) received commission on the sales, the words "sale proceeds of such goods" C were to be construed to mean sale proceeds ultimately received. On a construction of Section 80HHC this Court held that if the contention of the Appellant (therein) were to be upheld, it would mean that not only the export house but also the Appellant could claim deduction under Section 80HHC in respect of same amount. It was held that such an outcome would be contrary D to the language of the Section itself. This Court therefore dismissed the claim of the Appellant (therein) and held that the Appellant was not entitled to the benefits of Section 80HHC. In our view, far from assisting the Appellants, this case is against them. It shows that even though Section 80HHC has to be construed in the light of the object of giving incentives, it still has to be interpreted as per its language. An interpretation which leads to an absurd E result or a result not contemplated by its language cannot be given.

Mr. Dastur also relied upon the case of *Commissioner of Income Tax* v. *Shirke Construction Equipments Ltd.* reported in (2000) Vol. 246 ITR 429. In this case the Bombay High Court has held that Section 80HHC is a complete code in itself and that it is not controlled by Section 80AB. It was held that F profits had to be computed under Section 29 and Section 72 was not applicable. It was held that carry forward losses could not be set off for computing profits for the purpose of Section 80HHC. In this case it was also noticed that the object was to encourage exports.

G Mr. Dastur also relied upon the case of *Bajaj Tempo Ltd.* v. *Commissioner of Income Tax* reported in (1992) Vol. 196 ITR 188. In this case it has been held that provisions granting incentive should be construed liberally and that if a literal construction would defeat the purpose of the section then it becomes necessary to resort to a construction which is reasonable and purposeful to make the provision meaningful.

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Mr. Dastur also relied upon a Circular issued by the Board bearing No. 421 dated 12th June, 1985 wherein it has been mentioned that Section 80HHC is a provision relating to incentives for exporters and has been incorporated with a view to providing its exporters with requisite resources for modernization, technological upgradation, product development and other activities.

Mr. Dastur also relied upon a Judgment in the case of *Commissioner of Income-tax* v. *Smt. T.C. Usha,* reported in 2003(137) Taxman 297. In this case the Kerala High Court was considering an identical question i.e. whether the profits earned from export of self manufactured goods were to be set off against loss incurred in export of trading goods. The Kerala High Court has accepted arguments similar to those made by Mr. Dastur and has concluded that the losses were not to be set off against the profits earned from export of own manufactured goods. In coming to this conclusion the Kerala High Court has proceeded on the footing that Section 80HHC is a self contained code and the proceeds have to be worked out strictly in accordance with the provisions.

Mr. Dastur submitted that a reading of Section 80HHC would show that where the assessee exports goods manufactured by him he would be covered by sub-clause (3)(a) and only the profits of such business would be taken into account. He submitted that where the assessee exports only trading goods then the profits of those goods only would be taken into account in sub-clause (3)(b). He submitted that sub-clause (3)(c) dealt with a case where the assessee exported goods manufactured by him as well as trading goods. He submitted that in such a case profits from export of goods manufactured by the assessee were to be considered separately and the profits from exports of trading goods were to be considered separately. He submitted that if there were profits from both then both the profits would be taken into consideration. He submitted that if there were profits only in respect of one type of exports then those profits could not be negatived or set off against the loss from the other export. He submitted that the word "and" in Section 80HHC(3)(c) has to be liberally construed and cannot to be taken to mean that both the profits have to be clubbed or considered together. He submitted that persons who earn valuable foreign exchange cannot be deprived of the benefits of his export by adopting a construction which would defeat the very purpose for which the provision has been enacted. He submitted that the fact that the word "and" does not mean that sub-clauses 3(c)(i) and (ii) have to be taken together is clear from the fact that in other Sections, such as Section 80HHD,

A the Legislature has used the words "aggregate of". He submitted that wherever the Legislature intended that both were to be taken together it has used words like "aggregate of". He submitted that when the Legislature has not used such words it necessarily meant that the intention of the Legislature was that the two are not to be taken together, but that each has to be considered separately and on its own. He submitted that the aim being to give an incentive B for earning foreign exchange, so long as there was a profit from export either of self manufactured goods or from export of trading goods deduction has to be given for that profit by ignoring a loss in respect of other export. He submitted that a party who has earned valuable foreign exchange cannot be deprived of the benefit on an interpretation which defeats the very purpose C of the enactment.

We are unable to accept the submission of Mr. Dastur. Undoubtedly Section 80HHC has been incorporated with a view to providing incentive to export houses. Even though a liberal interpretation has to be given to such a provision the interpretation has to be as per the wordings of this Section. D If the wordings of the Section are clear then benefits, which are not available under the Section, cannot be conferred by ignoring or misinterpreting words in the Section. In this case we are concerned with the wordings of sub-section 3(c) of Section 80HHC. As noted earlier sub-Section 3(a) deals with the case where the export is only of self manufactured goods. Sub-section 3(b) deals E with the case where the export is only of trading goods. Thus when the Legislature wanted to take exports from self manufactured goods or trading goods separately, it has already so provided in sub-section (3)(a) and (3)(b). It would not be denied that the word "profit" in Section 80HHC(1) and Sections 80HHC (3)(a) and 3(b) means a positive profit. In other words if there is a loss then no deduction would be available under Section 80HHC F (1) or (3)(a) or (3)(b). In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to a deduction. If the net figure is a loss then the assessee will not be entitled to a deduction. Sub-section 3(c) deals with cases where the export is of both self manufactured goods as well as trading goods. The opening part of sub-section 3(c) states "profits derived G from such export shall". Then follows (i) and (ii). Between (i) and (ii) the word "and" appears. A plain reading of sub-section (c) shows that "profits from such exports" has to be profits of exports of self manufactured goods plus profits of exports of trading goods. The profit is to be calculated in the manner laid down in 3(c)(i) and (ii). The opening words "profit derived from H such exports" together with the word "and" clearly indicate that the profits

have to be calculated by counting both the exports. It is clear from a reading of Sub-section (1) of Section 80HHC(3) that a deduction can be permitted only if there is a positive profit in the exports of both self manufactured goods as well as trading goods. If there is a loss in either of the two then that loss has to be taken into account for the purposes of computing profits.

Under Section 80HHC(1) the deduction is to be given in computing the total income of the assessee. In computing the total income of the assessee both profits as well as losses will have to be taken into consideration. Section 80AB is relevant. It reads as follows:

> "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."

Section 80B(5) is also relevant. Section 80B(5) provides that "gross total income" means total income computed in accordance with the provisions of the Income Tax Act.

Section 80AB is also in Chapter VI-A. It starts with the words "where any deduction is required to be made or allowed under any Section of this Chapter". This would include Section 80HHC. Section 80AB further provides that "notwithstanding anything contained in that Section". Thus Section 80AB has been given an overriding effect over all other Sections in Chapter VIA. Section 80HHC does not provide that its provisions are to prevail over Section 80AB or over any other provision of the Act. Section 80HHC would thus be governed by Section 80AB. Decisions of the Bombay High Court and the Kerala High Court to the contrary cannot be said to be the correct law. Section 80AB makes it clear that the computation of income has to be in accordance with the provisions of the Act. If the income has to be computed in accordance with the provisions of the Act, then not only profits but also losses have to be taken into consideration.

A Another reason why the argument of Mr. Dastur cannot be accepted is that even under Section 80HHC (3)(c)(i) the profit is to be adjusted profit of business. The adjusted profit of the business means a profit as reduced by the profit derived from business of exports out of India of trading goods. Thus in calculating the profits, under Section 3(c)(i), one necessarily has to reduce by profits under 3(c)(ii). As seen above the term "profit" means positive B profit. Thus if there is loss then those losses in export of trading goods have to be adjusted. They cannot be ignored. We, therefore, hold that a plain reading of Section 80HHC makes it clear that in arriving at profits earned from export of both self manufactured goods and trading goods, the profits and losses in both the trades have to be taken into consideration. If after such C adjustments there is a positive profit the assessee would be entitled to deduction under Section 80HHC(i). If there is a loss he will not be entitled to any deduction.

Mr. Dastur submitted that the word "profit" in Section 80 HHC must have the same meaning in the entire Section. He submitted that as the word D profit in Section 80HHC (1) means only positive profit, it will have the same meaning in Section 80HHC (3)(c). He submitted that thus the word profit in Section 80HHC (3)(c) would not include losses and if there are any losses they are to be ignored. We are unable to accept this submission for more than one reason. Firstly it is not necessary that the word "profit" must have the E same meaning. The meaning that the word "profit" will depend on the context in which it is used. In Section 80HHC (1) it is admittedly used to indicate positive "profit" because the deduction will only be of a positive profit. Section 80HHC(3) is the sub-section which provides how profits are to be worked out in computing total income. For purposes of such computation both profit and losses have to be taken into account. Thus the word "profit" F in Section 80HHC(3) will mean profits after taking into account losses, if any. More importantly, in our view, the term "profit" in Section 80HHC both in Sub-section (1) and in sub-section (3) means a positive profit worked out after taking into consideration the losses, if any. Thus the word "profit" has the same meaning in Section 80HHC (1) and (3).

G It was next submitted that even when the profits are to be reduced by the losses in cases where an export house has disclaimed its turn over in favour of a supporting manufacturer, the turn over of the exporter gets reduced to the extent disclaimed. It is submitted that as the turnover, which is disclaimed, is reduced it cannot then be taken into consideration for the H purposes of computing profits under sub-section 3(c)(ii). In our view this is

an argument which merely needs to be stated to be rejected. If such an argument is accepted it would lead to an absurd result. It would mean when if there was no disclaimer the export house would not be entitled to any deduction in cases where there is a loss but because disclaimer has been made both the export house and the supporting manufacturer would become entitled to deductions. The proviso to sub-section (i) of Section 80HHC enables a disclaimer only to enable the export house to pass on deductions. It in no way reduces the turnover of the export house. In computing total income, the entire turnover is taken into account even though there is a disclaimer. Thus even though the disclaimer is made the taxable income of Rs. 4.39 crores has been arrived at by the Appellants after taking into account the entire turnover from export of trading goods. In arriving at the figure of Rs. 4.39 crores admittedly the loss of Rs. 6.86 crores has been taken into account. Even after disclaimer the turnover has remained the turnover of the Export House i.e. the Appellants. The disclaimer is only for purposes of enabling the export house to pass on the deduction which it would have got to the supporting manufacturer. It follows that if no deduction is available, because there is a loss, then the export house cannot pass on or give credit of such non-existing deduction to a supporting manufacturer.

Faced with this situation, it was submitted that even a loss is a negative profit. In support of the submission, reliance was placed upon the authority of this Court in the case of *Commissioner of Income-Tax (Central), Delhi* v. *Harprasad and Co. P. Ltd.* reported in 1975 (Vol. 99) ITR 118. In this case the meaning of loss was being considered in the context of capital gains made from sale of shares. The question was whether the loss could be carried forward and set off against capital gains in a subsequent year. While considering this question, it was held as follows:

> "From the charging provision of the Act, it is discernible that the words "income" or "profits and gains" should be understood as including losses also, so that, in one sense "profits and gains" represent "plus income" whereas losses represent "minus income". In other words, loss is negative profit. Both positive and negative profits are of a revenue character. Both must enter into computation, wherever it becomes material, in the same mode of the taxable income of the assessee."

In our view, the above observations are against the Appellants. They show that in computing income profits and gains, losses must also be taken into consideration.

A Mr. Dastur relied on a format of Form No. 10CCAC and a Circular of the Board wherein it is stated as follows:

> "With the adoption of the dual system for computing export profit, the computation of the disclaimed export turnover also required modification. The Finance Act has therefore amended section 80HHC
B in order to provide that, where the Export or Trading House disclaims the tax concession in favour of the supporting manufacturer, the concession to the Export or Trading House will be reduced by the amount which bears to the total export profits of trading goods the same proportion as the disclaimed export turnover bears to the total
C export turnover of trading goods. The formula in such cases will now be -
>
> 80HHC concession = export profit
>
> - [export profits on trading goods x
>
D disclaimed export turnover]
> total export turnover"

Mr. Dastur submitted that if even both profits and losses are to be taken into account the, on a disclaimer the losses will also have to be considered as negative profits and as per the Board Circular the calculation would be as
E follows:

> "80HHC Concession =
>
> *Export Profits - [Export Profits on Trading Goods x
>
F Disclaimed Export Turnover] .
>
> Total Export Turnover of Trading Goods
>
> $= * (-3,07,84,867) - (-6,86,65,804) \times \frac{18,53,53,371}{18,53,53,371}$
>
G
> $= (-3,07,84,867) - (-6,86,65,804)$
>
> $= (-3,07,84,867) + 6,86,65,804$
>
> $=$ **3,78,80,937"**

H He submitted that even on this calculation the Appellants are entitled to

deduction of Rs. 3,78,80,937/-. We are unable to accept this submission. The calculation as per the Board Circular would not be as claimed. The Board Circular nowhere provides for negative profits. The Board Circular also shows that only positive profits can be considered for purposes of deduction. A

We, therefore, see no substance in the Appeal. The same stands dismissed. There shall be no order as to costs. B

V.S.S. Appeal dismissed.