JEYAR CONSULTANT & INVESTMENT PVT. LTD. A

v.

COMMISSIONER OF INCOME TAX, MADRAS

(Civil Appeal No. 8912 of 2003)

APRIL 01, 2015. B

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Income Tax Act, 1961– s.80HHC (1) and (3) (b) – Deduction in respect of profits from export business – C Computation of – Assessee having turnover and income from business in India as well as from export business – Denial of deduction by the Revenue and confirmed by courts below on the ground that assessee having not earned profit from the export, deduction would be nil – On appeal, held: In order D to provide deduction, the pre-requisite is to ascertain that there are profits from the export business – If there are losses in the export business, but profits in domestic business is more than the export losses, benefit of s.80HHC would not be available – The appellant-assessee since incurred losses E in export business, not entitled to benefit u/s. 80HHC – The domestic income of the assessee from dividend, interest, profit or sale of shares and fees cannot be covered by expression 'total turnover' for the purpose of computation of the deduction as provided u/s 80HHC 3(b) and the Circular F No. 564 dated 5.7.1990 issued by the Central Board of Direct Taxes.

Dismissing the appeal, the Court

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HELD: 1. From the scheme of Section 80HHC of Income Tax Act, it is clear that deduction is to be provided under sub-section (1) thereof which is "in respect of profits retained for export business". Therefore, in the first instance, it has to be satisfied that there are profits H

A **from the export business. That is the pre-requisite. Sub-section (3) comes into picture only for the purpose of computation of deduction. For such an eventuality, while computing the "total turnover", one may apply the formula stated in clause (b) of sub-section (3) of**
B **Section 80HHC. However, that would not mean that even if there are losses in the export business but the profits in respect of business carried out within India are more than the export losses, benefit under Section 80HHC would still be available. In the present case, since there**
C **are losses in the export business, question of providing deduction under Section 80HHC does not arise and as a consequence, there is no question of computation of any such deduction in the manner provided under sub-**
D **section (3). [para 19] [998-E-H; 999-A]**

Ipca Laboratory Ltd. v. Deputy Commissioner of Income Tax Mumbai **(2004) 12 SCC 742: 2004 (2) SCR 1075;** *A.M. Moosa v. Commissioner of Income Tax, Trivandrum* **(2007) 9 SCR 831- relied on.**

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2. In the present case, the domestic income in respect of which benefit is sought is from dividend income, interest income, profit or sale of shares and fees received from arranging finance for the assessee's
F **clients. These are income simplicitor and cannot be covered by the expression "total turnover". Even otherwise, the formula as sought to be applied by the appellant does not become applicable on the facts of**
G **the present case. [para 21, 22 and 23] [999-C, H; 1001-B-C]**

Case Law Reference

2004 (2) SCR 1075	**relied on**	**Para 9 and 18**
(2007) 9 SCR 831	**relied on**	**Para 9 and 18**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8912 of 2003. A

From the Judgment and Order dated 20.08.2002 of the High Court of Judicature at Madras in T.C. No. 660 of 1994. B

Nikhil Nayyar, Gautam Narayan, Asmita Singh for the Appellant.

N. K. Kaul, ASG, Jaideep Gupta, Nitesh Daryanani, Sadhana Sandhu, Parvesh Thakur, Anil Katiyar for the Respondent. C

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. What is the correct method of computation of deductions under Section 80HHC(3) of the Income Tax Act, 1961, in the given facts and circumstances, is the question which needs an answer in the present appeal. D

2. The given facts and circumstances, as they appear on record, are stated in the summary form herein below: E

Finance Act of 1983 introduced Section 80HHC of the Income Tax Act, providing incentives to exporters and deductions for persons involved in the export business. Section 80HHC(3)(b) provided the formula for the computation of deduction for persons who do not have business exclusively of export out of India, that is to say, in cases where the assessee is having turnover and income from business in India as well as from the export business. For the sake of convenience, relevant portions of Section 80HHC are extracted hereinbelow: F G

"80HHC. Deduction in respect of profits retained for export business.-(1) Where an assessee, being an H

A Indian company or a person (other than a company) resident in India, is engaged in the business 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
B computing the total income of the assessee, a deduction of the profits derived by the assessee from the export of such goods or merchandise:

Provided that if the assessee, being a holder of an
C Export House Certificate or a Trading House Certificate (hereinafter in this section referred to as an Export 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
D 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 of the export business of the assessee the same proportion as the amount of export turnover specified in the said
E certificate bears to the total export turnover of the assessee.

xx xx xx

F 3. For the purposes of sub-section (1), profits derived from the export of goods or merchandise out of India shall be -

(a) in a case where the business carried on by the
G assessee consists exclusively of the export out of India of the goods or merchandise to which this section applies, the profits of the business as computed under the head "profits and gains of business or profession".

H (b) in a case where the business carried on by the assessee does not consist exclusively of the export

out of India of the goods or merchandise to which this section applies, the amount which bears to the profits of the business (as computed under the head "Profits and gains of business or profession") the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."

3. On 05.07.1990, the Central Board of Direct Taxes (CBDT) issued Circular No.564 dated 05.07.1990 giving detailed guidelines as to how the deductions under Section 80HHC are to be calculated. The formula prescribed by CBDT circular is as follows:

$$\text{Profit of the Business} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

4. The appellant company is engaged in the business of export of Marine products and also financial consultancy and trading in equity shares. Its total business does not consist purely of exports but includes business within the country as well which situation is covered by Section 80HHC(3)(b), noted hereinabove.

5. The Assessing Officer while dealing with the assessments of the appellant in respect of the Assessment Year 1989-1990 took the view that the deduction was not allowable on the ground that there is no relationship between the Assessee Company and the Processors. The appellant carried the said order in appeal. The appeal against the assessment order was dismissed by the Commissioner of Income Tax (Appeals), Madras vide order dated 17.08.1991. The appellant filed an appeal before the Income Tax Appellate Tribunal. By its judgment dated 24.04.1992, the Appellate Tribunal set aside the order of the Assessing Officer and came to a conclusion that the appellant was entitled to full relief under Section 80HHC and directed the Assessing Officer to grant relief to the assessee.

A 6. On remand, the Assessing Officer passed fresh order dated 28.05.1992 giving effect to the orders of the ITAT. While giving the effect, the Assessing Officer found that the appellant had not earned any profits from the export of Marine products and in fact, from the said export business, it had
B suffered a loss. Therefore, according to the Assessing Officer, as per Section 80AB, the deduction under Section 80HHC could not exceed the amount of income included in the total income. He found that as the income from export of Marine product business was in the negative i.e. there
C was a loss, the deduction under Section 80HHC would be nil, even when the assessee is entitled to deduction under the said provision. With this order second round of litigation started. The assessee challenged the order passed by the Assessing Officer before the Commissioner (Appeals)
D contending that the formula which was applied by the Assessing Officer was different from the formula prescribed under Section 80HHC of the Act and it was also in direct violation of CBDT Circular dated 05.07.1990. The
E Commissioner (Appeals), however, dismissed the appeal of the assessee principally on the ground that under Section 246 of the Income Tax Act, an order of the Assessing Officer giving effect to the order of the ITAT is not an appealable order. The assessee approached the ITAT questioning the
F validity of the orders passed by the Assessing Officer and Commissioner (Appeals). However, ITAT also dismissed the appeal of the assessee vide its order dated 31.03.1993 and upheld the order of the Assessing Officer. Challenging the order of the ITAT, the assessee approached the High Court,
G under Section 256(2) of the Act seeking reference to it. Order dated 03.02.1994 was passed by the High Court directing ITAT to frame the reference and place the same before the High Court. On this direction of the High Court, the ITAT referred the following question to the High Court:

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"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the deduction admissible to the assessee under Section 80HHC is nil?"

7. The High Court has now pronounced on the aforesaid question referred to it by the impugned judgment dated 20.08.2002 answering this question against the assessee holding as under:

"5. In this case, the assessment admittedly had not earned any profits from the export of the Marine products. On the other hand, it had suffered a loss. The deduction permissible under Section 80HHC is only a deduction of the profits of the assessee from the export of the goods or merchandise. By the very terms of Section 80HHC, it is clear that the assessee was not entitled to any benefit thereunder in the absence of any profits.

The question referred to us therefore is answered against the assessee and in favour of the revenue."

8. Special leave petition was filed against the judgment of the High Court in which leave was granted on 10.11.2003. This is how the appeal has come up for hearing.

9. Mr. Nikhil Nayyar, learned counsel appearing for the assessee, submitted that the aforesaid reasoning of the High Court is palpably wrong in holding that when there are losses suffered in the export business, no deduction under Section 80HHC is permissible. According to him, while forming this opinion the High Court looked into sub-section (1) of Section 80HHC alone as is clear from the order of the High Court, and did not take into consideration provisions of sub-section (3) thereof. His submission was that no doubt, this Court in

A the case of ***IPCA Laboratory Ltd.*** v. ***Deputy Commissioner of Income Tax, Mumbai***[1] held that the benefit of Section 80HHC shall not be given in cases where there was loss. He, however, pointed out that the judgment in ***IPCA Laboratory Ltd.*** (supra) was explained and clarified B subsequently by this Court in ***A.M. Moosa*** v. ***Commissioner of Income Tax, Trivandrum***[2] wherein it was made 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. C If after such adjustments there is a positive profit, the assessee would be entitled to deduction under Section 80HHC(1) and if there is a loss, he will not be entitled to any deduction. He, thus, submitted that the term "profit of business" would not confine to profit from export business D but income both from export business as well as from domestic business, had to be taken into consideration. Therefore, even if there was a loss from the export business, but there was profit from the business done within the country E and on adjustment of loss from the export business against the profits from the business in India, in the balance sheet, it was still profit resulting into positive income, the benefit of Section 80HHC was admissible.

F 10. He further argued that the objective behind Section 80HHC was to give incentive to those export houses who were earning foreign exchange. Even if there was loss from the export business, assessee had earned the foreign exchange and once it was found that overall there were G profits, the following formula contained in Section 80HHC became applicable:

$$\text{Profit of the Business} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

H [1] (2004) 12 SCC 742

[2] (2007) 9 SCR 831

11. He also referred to the "Provisions Relating To Direct Taxes" stated in the Finance (No.2) Bill, 1991 presented in the Budget of 1991-1992 and referred to the provisions contained therein which relates to incentives for earning foreign exchange. It makes the following reading:

"20. Under the existing provisions of Section 80HHC of the Income Tax Act, exporters are allowed. In the computation of their total income, a deduction of the entire profits derived from export of goods or merchandise other than mineral oil, minerals and ores. The deduction is subject to the condition that the sale proceeds of such goods or merchandise are received in, or brought into, India in convertible foreign exchange.

In view of the fact that significant value addition is achieved when a mineral is processed or when a stone is cut and polished, it is desirable to encourage their export. It is, therefore, proposed to extend the benefit of deduction under Section 80HHC to exporters of processed minerals. The list of processed minerals, in respect of which this concession is being extended, is being provided in a new schedule to the Income-Tax Act.

The proposed amendment will take effect from the 1st day of April, 1991 and will, accordingly, apply in relation to the assessment year 1991-1992 and subsequent years."

12. Mr. Neeraj Kaul, ASG and Mr. Gupta, the learned senior counsel, appearing for the Revenue, on the other hand, supported the view taken by the High Court. He also specifically referred to the conclusion arrived at by the Tribunal in support of his plea that in the instant case, formula sought to be involved would not apply. He pointed out that

A in the present case, there was no income from indigenous business but it was only in the form of brokerage, dividend, interest etc. which, in no case, be described as "turnover" and be part of "total turnover". He referred to the same document viz. "Provisions Relating to Direct Taxes" where
B following clarification also appears:

> "It is, therefore, proposed to clarify that "profits of the business" for the purpose of Section 80HHC will not include receipts by way of brokerage, commission,
C interest, rent, charges or any other receipt of a similar nature. As some expenditure might be incurred in earning these incomes, which in the generality of cases is part of common expenses, it is proposed to provide ad hoc 10 per cent deduction from such incomes to
D account for these expenses."

13. We have considered the submissions of counsel appearing on both sides.

E 14. There are two facets of this case which need to be looked into. In the first instance, we have to consider as to whether view of the High Court that the deduction is permissible under Section 80HHC only when there are profits from the exports of the goods or merchandise is correct or
F it would be open to the assessee to club the income from export business as well as domestic business and even if there are losses in the export business but after setting off those losses against the income/profits from the business in India, still there is net-profit of the business, the benefit under
G Section 80HHC will be available? The second question would arise is as to whether formula applied by the fora below is correct? In other words, while applying the formula, we have to see what would comprise "total turnover"?

H 15. Before we provide the answer to the first question,

it would be appropriate to take note of the judgments in ***IPCA Laboratory*** as well as ***A.M. Moosa***. In ***IPCA Laboratory***, the appellant was a holder of an Export House certificate issued by CCI&E. It exported self-manufactured goods as well as goods manufactured by supporting manufacturers i.e. trading goods. In the previous year relevant to AY 1996-97 its taxable income, before the deductions under Chapter VI-A, IT Act was Rs.4.39 crores. It had earned a profit of Rs. 3.78 crores from the export of self-manufactured goods. However, from the exports of trading goods there was a loss of Rs.6.86 crores. The appellant issued certificates of disclaimer in favour of supporting manufacturers in respect of the entire export of the trading goods. In its return for AY 1996-97, it claimed deduction under Section 80-HHC, IT Act in the sum of Rs. 3.78 crores. But, holding that there was a net loss from export of goods, the Assessing Officer disallowed the deduction. This order of the Assessing Officer was unsuccessfully challenged by the appellant as all the authorities upto the High Court upheld that order. This Court also, in the aforesaid judgment, concurred with the view taken by the courts below. Before this Court, specific reliance was placed on sub-section (3) of Section 80HHC and on that basis, it was contended that in a case where the assessee exported goods manufactured by himself as well as trading goods, profits from the two types of exports were to be considered separately and the profit in respect of one could not be negated or set off against the loss from the other. It was pleaded that when the main purpose behind that Section was to given incentive for earning for an exchange, the Section must be given an interpretation which would further that object. It was also argued that the expression "profit" occurring under Section 80HHC(1), so also in Section 80HHC(3), should be construed to mean positive profit and, therefore, in Section 80HHC(3)(c) it would not include losses and if there were any losses, they were to be ignored.

A Another submission was that even when the profits were to be reduced by the losses, in cases of disclaimer of its turnover by an assessee export house in favour of a supporting manufacturer, the turnover of the export house got reduced to that extent. Therefore, it could not be taken into
B consideration for the purposes of computing profits under Section 80HHC(3)(c)(ii). Reliance was also placed on Circular No.421 dated 12.06.1985 of the CBDT to show that Section 80HHC was incorporated with a view to providing incentives to its exporters with requisite resources of
C modernization, technological upgradation, product development and other activities.

16. None of the aforesaid arguments weighed with this Court. While dismissing the appeal of the appellant, the
D Court laid down the following law:

> "Although Section 80-HHC has been incorporated with a view to provide incentive to export houses and a liberal interpretation has to be given to such a provision, the
E interpretation has to be as per the wordings of that section. When the legislature wanted to take exports from self-manufactured goods or trading goods separately, it has already so provided in sub-sections (3)(a) and (3)(b). The word "profit" in Section 80-
F HHC(1) and Sections 80-HHC(3)(a) and (b) means a positive profit. In other words, if there is a loss then no deduction would be available under Section 80-HHC(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
G considered. If the net figure is a loss then the assessee will not be entitled to a deduction. The opening words "profit derived from such exports" occurring in Section 80-HHC(3) together with the work "and" occurring between clauses (i) and (ii) thereof clearly indicate that
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the profits have to be calculated by counting both the exports. A

Under Section 80-HHC(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. Sections 80-AB and 80-B(5) are relevant. Section 80-AB has been given an overriding effect over all other sections in Chapter VI-A. Section 80-HHC would thus be governed by Section 80-AB which makes it clear that the computation of income has to be in accordance with the provisions of the Act. B C

Moreover, even under Section 80-HHC(3)(c)(i) the profit is to be adjusted profit of business which 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 the profits under Section 3(c)(ii). Section 80-HHC 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 80-HHC(i). If there is a loss he will not be entitled to any deduction. D E F

In Section 80-HHC, the word "profit" is admittedly used to indicate positive "profit" because the deduction will only be of a positive profit. Section 80-HHC(3) provides how profits are to be worked out in computing total income. For the purposes of such computation both profits and losses have to be taken into account. Thus the word "profit" in Section 80-HHC(3) will mean profits G H

A after taking into account losses, if any. The term "profit" in both Sections 80-HHC(1) and 80-HHC(3) means a positive profit worked out after taking into consideration the losses, if any. Thus the word "profit" has the same meaning in Sections 80-HHC(1) and (3).

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The proviso to sub-section (1) of Section 80-HHC enables a disclaimer only to enable the export house to pass on deductions. It in no way reduces the turnover of the export house. The disclaimer is only for purposes

C 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

D manufacturer.

The Board circular also shows that only positive profits can be considered for purposes of deduction."

E 17. We find that in ***A.M. Moosa***, this Court, in fact, reiterated *IPCA* principles, as noted above. That was a case where Assessing Officer had disallowed the deduction claim of the assessee under Section 80HHC of the Act on the ground that the 'profits of the business computed under

F Section 80HHC indicated a negative figure'. This view was accepted by all the Courts and affirmed by this Court in the aforesaid judgment. Before this Court, submission of the appellant/assessee was that a reading of Section 80HHC would show that where the assessee exports goods

G manufactured by him, he would be covered by sub-section (3)(a) and only the profits of such business would be taken into account. Where the assessee exports only trading goods other than profits of these goods only would be taken into account of sub-section (3)(b). It was submitted that sub-

H section (3)(c) dealt with a case where the assessee exported

goods manufactured by him as well as trading goods. In such a case, profits from export of goods manufactured by the assessee were to be considered separately and the profits from export of trading goods were to be considered separately. If there were profits only in respect of one type of exports then this profit could not be negatived or set off from the loss from the other export. This contention was, obviously, not accepted and brushed aside in the following manner:

"7. The stand needs careful consideration. Undoubtedly, Section 80-HHC 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. 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 80-HHC. 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 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-sections (3)(a) and (3)(b). It would not be denied that the word "profit" in Section 80-HHC (1) and Sections 80- HHC(3)(a) or (3)(b)means a positive profit. In other words, if there is a loss then no deduction would be available under Section 80-HHC (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

A 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 from such export shall". Then
B follow clauses (i) and (ii). Between clauses (i) and (ii) the word "and" appears. A plain reading of sub- section (3)(c) shows that "profits from such exports" has to be profits from exports of self-manufactured goods plus profits from exports of trading goods. The profit is to
C be calculated in the manner laid down in Sections (3)(c)(i) and (ii). The opening words "profit derived from such exports" together with the word "and" clearly indicate that the profits have to be calculated by
D counting both the exports. It is clear from a reading of sub-section (1) of Section 80-HHC(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
E that loss has to be taken into account for the purposes of computing profits.

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

"80-AB. Where any deduction is required to be made
G 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
H 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 provision 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."

(emphasis in original)

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

10. Section 80-AB is also in Chapter VI-A. It starts with the words "where any deduction is required to be made or allowed under any section included in this Chapter". This would include Section 80- HHC. Section 80-AB further provides that "notwithstanding anything contained in that section". Thus Section 80-AB has been given an overriding effect over all other sections in Chapter VI-A. Section 80-HHC does not provide that its provisions are to prevail over Section 80-AB or over any other provision of the Act. Section 80-HHC would thus be governed by Section 80-AB. Decisions of the Bombay High Court in CIT v. Shirke Construction Equipment Ltd. (2000 (246) ITR 429) and the Kerala High Court in CIT v. T.C. Usha (2003 (132) Taxman 297) to the contrary cannot be said to be the correct law. Section 80-AB 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

A consideration.

11. Even under Section 80-HHC (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 B derived from business of exports out of India of trading goods. Thus in calculating the profits under sub-section (3)(c)(i) one necessarily has to reduce profits under sub-section (3)(c)(ii). As seen above, the term "profit" means positive profit. Thus if there is loss then those C losses in export of trading goods have to be adjusted. They cannot be ignored. A plain reading of Section 80-HHC 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 D have to be taken into consideration. If after such adjustments there is a positive profit, the assessee would be entitled to deduction under Section 80-HHC(1). If there is a loss he will not be entitled to any deduction.

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12. It was submitted that the word "profit" in Section 80-HHC must have the same meaning in the entire section, and that as the word profit in Section 80-HHC(1) means only positive profit, it will have the same F meaning in Section 80-HHC(3)(c). It is submitted that thus the word profit in Section 80-HHC(3)(c) would not include losses and if there are any losses, they are to be ignored. The plea is clearly without substance. Firstly, it is not necessary that the word "profit" must G have the same meaning. The meaning of the word "profit" will depend on the context in which it is used. In Section 80-HHC (1) it is admittedly used to indicate positive "profit" because the deduction will only be of a positive profit. Section 80- HHC(3) is the sub-section

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which provides how profits are to be worked out in computing total income. For purposes of such computation both profits and losses have to be taken into account. Thus the word "profit" in Section 80-HHC(3) will mean profits after taking into account losses, if any. More importantly, in our view, the term "profit" in Section 80-HHC 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 Sections 80-HHC(1) and (3).

13. In IPCA Laboratory Ltd. Vs. Dy. Commissioner of Income Tax, Mumbai, (2004) 12 SCC 742), after analyzing the position in the manner done above, it was held that the profit as contemplated under Section 80-HHC (1) and Section 80-HHC (3) means positive profit. Said view was reiterated in Income Tax Officer, Bangalore Vs. Induflex Products (P) Ltd., (2006 (1) SCC 458). We are in respectful agreement with the view."

18. It stands settled, on the co-joint reading of *IPCA* and *A.M. Moosa,* that where there are losses in the export of one type of goods (for example self-manufactured goods) and profits from the export of other type of goods (for example trading goods) then both are to be clubbed together to arrive at net-profits or losses for the purpose of applying the provisions of Section 80HHC of the Act. If the net result was loss from the export business, then the deduction under the aforesaid Act is not permissible. As a fortiori, if there is net profit from the export business, after adjusting the losses from one type of export business from other type of export business, the benefit of the said provision would be granted.

19. It is also to be borne in mind that in both the aforesaid cases namely *IPCA* and *A.M. Moosa*, the Court

A was concerned with two business activities, both of which related to export, one from export of self manufactured goods and other in respect of trading goods i.e. those which are manufactured by others. In other words, the Court was concerned only with the income from exports. In the present
B case, however, the fact situation is somewhat different. Here, in so far as export business is concerned, there are losses. However, the appellant-assessee relies upon Section 80HHC(3)(b), as existed at the relevant time, to contend that the profits of the business as a whole i.e. including profits
C earned from the goods or merchandise within India will also be taken into consideration. In this manner, argues the appellant, even if there are losses in the export business, but profits of indigenous business outweigh those losses and the net result is that there is profit of the business, then
D the deduction under Section 80HHC should be given. However, having regard to the law laid down in *IPCA* and *A.M. Moosa,* we cannot agree with the learned counsel for the appellant. From the scheme of Section 80HHC, it is
E clear that deduction is to be provided under sub-section (1) thereof which is "in respect of profits retained for export business". Therefore, in the first instance, it has to be satisfied that there are profits from the export business. That is the pre-requisite as held in *IPCA* and *A.M. Moosa* as well.
F Sub-section (3) comes into picture only for the purpose of computation of deduction. For such an eventuality, while computing the "total turnover", one may apply the formula stated in clause (b) of sub-section (3) of Section 80HHC. However, that would not mean that even if there are losses
G in the export business but the profits in respect of business carried out within India are more than the export losses, benefit under Section 80HHC would still be available. In the present case, since there are losses in the export business, question of providing deduction under Section 80HHC does
H not arise and as a consequence, there is no question of

computation of any such deduction in the manner provided under sub-section (3).

20. Therefore, we are of the opinion that the view taken by the High Court is correct on the facts of this case. With this, there may not be need to answer the second facet of the problem as the question of computation of deduction does not arise. However, we find that even here, the approach of the ITAT is correct.

21. In the present case, the domestic income in respect of which benefit is sought is from dividend income, interest income, profit or sale of shares and fees received from arranging finance for the assessee's clients. The Tribunal has recorded this aspect as under:

> 13. It is, however, seen from the assessee's Profit & Loss Account for the year of account ending on 31.03.1989 that the aggregate sum of Rs.26,04,477 (which the assessee has labeled as total turnover) comprised not only export turnover of Rs.16,67,084 but also the following items which cannot properly be regarded as turnover:
>
(1)	Brokerage received for arranging Finance for the assessee's claims	:	Rs. 8,50,321
(2)	Dividend	:	Rs. 5,247
(3)	Interest	:	Rs. 7,212
(4)	Profit on sale of shares	:	Rs. 74,913
			Rs.9,37,693

22. The Tribunal observed that aforesaid four items are income simplicitor and cannot be covered by the expression "total turnover". Following discussion of the Tribunal in this behalf needs to be quoted:

A "17. Now the mode and mechanics of computing the deduction admissible to an assessee falling under Section 80HHC(3)(b) clearly proceeds on the basis that in trading transactions profit, or, as the case may be, loss is embedded in the gross turnover. The most B significant conclusion that flows from the said provision is that when Section 80HHC(3) talks of turnover, it talks of trading receipts and not of receipts which are of the nature of income to start with. It should, therefore, follow that the aggregate sum of Rs.9,37,693/- referred C to supra cannot be regarded as turnover, and that by the same token, it should be left out of reckoning for purposes of computing deduction admissible to the assessee under Section 80HHC. If this exercise is done, we are back to Proposition No.1. This would D mean that the deduction admissible to the assessee under Section 80HHC would be nil, especially in view of the fact that the export business of the assessee has resulted in a loss.

E xx xx xxx

19. But a manufacturer may not invariably be able to export, in their entirety, the goods or merchandise manufactured. He may export a part of them and sell F the rest in India. Given the paramount need to give fillip to exports, Parliament clearly intended that the benefit of Section 80HHC should not be denied in such cases. But the difficulty in such cases is that the profits attributable to exports cannot be ascertain with G precision. This is because not only the manufacturing activities but also the selling activities (including the activities connected with exports) from a continuous, integrated whole. Even so, the intention of Parliament, was to extend the benefit of Section 80HHC to the H

extent of the profits generated by exports. With this end in view, Parliament incorporated a rule of thumb in Section 80HHC(3)(b). As long as the assessee has cleared profits in a particular year of account, export profits are computed by applying to total profits the ratio which export turnover bears to total turnover." A B

23. We are in agreement with the aforesaid view of the Tribunal. Therefore, even otherwise, the formula as sought to be applied by the appellant does not become applicable on the facts of this case. C

24. Thus, from every angle the matter is to be looked into, the appeal lacks merit. Same is, accordingly, dismissed with costs. D

Kalpana K. Tripathy Appeal dismissed.