IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

1. D.B. Income Tax Reference No.4/2003
   CIT v. Vimal Chand Surana

2. D.B. Income Tax Appeal No.52/2003
   M/s Gokuldas Haridas Kotawala v. CIT & Another

3. D.B. Income Tax Appeal No.56/2003
   M/s. Jagannath Harinarain v. The ITO & Another

4. D.B. Income Tax Appeal No.57/2003
   M/s Jagannath Harinarain v. The Income Tax Officer & Anr

5. D.B. Income Tax Appeal No.58/2003
   Man Mohan Gupta v. The Assistant CIT & Anr

6. D.B. Income Tax Appeal No.60/2003
   Vimal Chand Surana HUF v. The Assistant CIT & Another

7. D.B. Income Tax Appeal No.70/2003
   CIT v. Vijay Chand Lodha

8. D.B. Income Tax Appeal No.90/2003
   Kotahwalas v. CIT & Another

9. D.B. Income Tax Appeal No.91/2003
   Gokuldas Haridas Kotawala v. CIT & Another

10. D.B. Income Tax Appeal No.93/2003
    CIT v. Sunderdas Sonkia

11. D.B. Income Tax Appeal No.111/2003
    CIT v. Kotawalas

12. D.B. Income Tax Appeal No.136/2003
    CIT v. Kotawalas

13. D.B. Income Tax Appeal No.89/2004
    CIT v. M/s Goyal Fashions Pvt. Ltd.

14. D.B. Income Tax Appeal No.142/2004
    M/s S.K. Gems v. The Assistant CIT & Another

15. D.B. Income Tax Appeal No.28/2005
    CIT v. M/s Chordia Gems

16. D.B. Income Tax Appeal No.57/2005
Vijay Chand Lodha v. The Income Tax Officer & Another

17. D.B. Income Tax Appeal No.25/2006
CIT v. Ashish Goyal

Reserved on 31st July 2015 Pronounced on 11th Sept. 2015

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice J.K. Ranka

Mr. Anuroop Singhi, Sr. Standing Counsel,
Mr. OP Pareek and
Mr. Amitabh Jatav ...... counsel for appellants

Mr. TC Jain
Mr. Amit Jindal
Mr. ML Borad and
Mr. Vivek Singhal ...... counsel for respondents

Reportable

By the Court (per J.K. Ranka, J.)

1. These income tax reference and Income Tax appeals, filed at the instance of both, Revenue and Assessees, since involve common questions of law, and raise common controversy, are being disposed of, as agreed by counsel for the parties, by this common order.

2. In DBIT Reference No.4/2003, which relates to the assessment year 1989-90, filed at the instance of Revenue before the Income Tax Appellate Tribunal (for short 'ITAT'), as directed by this court under Section 256(2) of the Income Tax Act, referred the following substantial question of law:-

> “Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to deduction under section 80HHC(1) in respect of interest of

> Rs.3,62,342/- earned by employing surplus funds locally, notwithstanding the provisions of sub-section 2(a) of section 80HHC?"

3. DBIT Appeal No.60/2003 : The facts in the instant appeal relates to the same assessee as in IT Reference No.4/2003 (supra) but for the assessment year 1991-92. We have already noticed that in Reference no.4/2003, the appeal was allowed by the Tribunal in favour of the assessee, but in the instant case though between the same parties, the appeal of the assessee before the Tribunal was dismissed though the controversy remaining the same and the Tribunal changed its view. The appeal was admitted on following questions of law:-

> "Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified in holding that assessee is not entitled for deduction under section 80HHC on interest income of Rs.2,80,007/- as per law as existing at the relevant assessment year.
>
> Whether on the facts and circumstances of the case and on the basis of material available on record, the Hon'ble Tribunal was correct in coming to the conclusion that income from interest on surplus funds is to be treated as Income from other sources even in absence of any such finding by lower authorities."

4. DBIT Appeal No.52/2003, which relates to the assessment year 1991-92, filed at the instance of Assessee, has been admitted on the following substantial question of law:-

> "Whether in the facts and circumstances of the case the ITAT was justified in law in restricting the claim of interest and not

> allowing full benefit of deduction u/s. 80HHC of interest income as profit and gains from business."

5. By and large, the questions involved in all these references/appeals, revolve around the above issues.

6. Primarily the Assessees in all these cases are exporters of precious and semi precious stones and jewellery, and are 100% exporters and the goods are being exported after being appraised by the custom authorities and the remittance of sale consideration is received through bank. Since question of deduction u/sec. 80HHC of the Income Tax Act arise in all these cases, for claiming of such deduction, Audit report, as mandated, has been obtained and the provisions of the Act have been complied with. Since there was divergence of opinion in judgments of Division Bench of this court, therefore, the matter was referred to Hon'ble the Chief Justice to constitute a Larger Bench.

7. The Larger Bench of this court, in Reliance Trading Corporation v. ITO (2015) 376 ITR 53 (FB-Raj.), dealt with and answered the questions referred, as under:-

> "*Q. No.(1)* Whether the assessee is entitled for deduction under section 80 HHC on interest income of Rs.1,76,930/- as per law as existing at the relevant assessment year?
>
> *Ans*. While applying the direct and proximate nexus test, we are of the view that where the interest earned does not have direct and proximate nexus with the income from the business of export, the interest cannot be deducted as income from

export under Section 80HHC(3)(a) of the Act, and has to be given the same treatment for tax, as "income from other sources" under Section 56 of the Act.

The question No.1 is, thus, answered in favour of the Revenue, and against the assessee.

Q. No.(2) Whether the amendment in section 80 HHC, by way of insertion of sub-section (4B) excluding interest income for the purpose of deduction under section 80 HHC will affect the deduction of interest income under section 80 HHC for the period prior to amendment?

Ans. So far as question No.2 is concerned, on the aforesaid discussion, we are also of the view that the amendment in Section 80HHC, by way of insertion of sub-section (4B), excluding interest income for the purposes of deduction under Section 80HHC of the Act, will also affect the deduction of interest income under Section 80HHC of the Act, for the period prior to the amendment, inasmuch as the applicability of the principle of direct and proximate nexus to the business income, will apply both, to the provisions of the Act prior to, and after the amendment, which came into effect by the Finance Act, 1992, with effect from 01.04.1992. The question No.2, is thus decided in favour of the Revenue and against the assessee.

Q. No.(3) In case the assessee is not earning income in convertible foreign exchange by way of an interest on the money advanced, even then, whether the assessee is eligible for deduction under section 80 HHC of the Act?

Ans. On the question No.3, we hold that the earning of the income convertible from foreign exchange by way of interest, is not necessary so long as the interest is derived from business of export, and has direct and proximate nexus, with the income earned out of the profits retained for the export business. The earning of the income convertible from foreign exchange, is not a test for determining, as to whether deduction is allowable in respect of the income derived from the profits retained for export business. The question No.3 is also decided in favour of the Revenue and against the assessee."

8. Learned counsel appearing for the Revenue contended that the issues

in the present batch of cases, are primarily the same which have been answered in favour of the Revenue by the Larger Bench and, therefore, primarily the contention on behalf of the Revenue is that there is no direct nexus of the funds with the export activity of the Assessee and the contention of the Assessee all throughout has been that out of the export receipts/income, the surplus funds which were lying idle, were advanced in the market and that has yielded interest and such interest having direct nexus with Exports being income from business enures for deduction u/s 80HHC of the Act but the claim of the Revenue throughout has been that though it may constitute a separate business, but had no nexus with the export of precious and semi precious stones, and whatever the interest was earned, was in the nature of 'income from other sources' having no proximity with Export of goods.

8.1 While relying upon the judgment of the Larger Bench, the learned counsel for the Revenue in addition has relied upon judgments of this court in *Murli Investment Co.* v. *CIT* (1987) 167 ITR 368, *CIT* v. *Rajasthan Land Development Corporation* (1995) 211 ITR 597 (Raj.), judgment of the Delhi High Court in the case of *CIT* v. *Shri Ram Honda Power Equip* (2007) 289 ITR 475 (Delhi), judgments of the Kerala High Court in *Ravindranathan Nair (K.)* v. *Deputy CIT (Assessment)*(2003) 262 ITR 669, *Southern Cashew Exporters* v. *Deputy CIT* (2003)183 CTR (Ker) 175, and other authorities. He further contended that this court, in the case of *CIT* v. *Rajasthan Land Development Corporation* (supra), laid down five tests and according to him, all the five tests go against the claim of the

Assessees and thus, contended that the claim of Revenue deserves to be upheld.

9. Per contra, learned counsel for the Assessees jointly and separately contended that judgment of the Larger Bench is distinguishable, and contended that the issue before the Larger Bench, though have a substantial legal question, but facts of each case are required to be looked into. They further contended that in these cases the contention of the Assessees has been that there is a finding of fact recorded by the Tribunal as also by the Assessing Officer, in some cases, that the Assessees were regularly engaged in the business of earning interest out of realisation of sale receipts from Exports, which constituted business income and once there is a finding of fact recorded by the Tribunal that the Assessees were carrying on the business of money lending, such a finding of fact recorded by the Tribunal being a fact finding authority, cannot be said to be perverse. They further contended that once there is a joint business of export of goods and merchandise, business income constituted earning by way of interest, the claim of the assessees is well justified and sec. 80HHC does not distinguish various kind of businesses. They further contended that direct and proximate nexus test is required to be proved by the Revenue rather than assessee and the finding of the Tribunal that it is a business income, supports the case of the assessee.

10. Mr. T.C. Jain, learned counsel, apart from common submission further contended that there is a definite finding that carrying on the business of earning of interest was regular and systematic, regular books of

account are being maintained and such transactions are duly recorded in the same books of account, constitute business income and once it has been held that it was business income, deduction under sec. 80HHC ought to be allowed.

11. Mr. M.L. Barod, learned counsel, also contended that in DBIT Appeal No.28/2005 issue is the same, but also emerges is that the assessee earned interest and simultaneously paid interest as well and only net interest earned is required to be considered as the income from surplus funds, while Revenue has considered the gross interest income. In this regard he relied upon the judgment rendered in the cases of *ACG Associated Capsules Pvt. Ltd.* v. *CIT* (2012) 343 ITR 89 (SC) and CIT v. Shri Ram Honda Power Equip (supra) of Delhi High Court. His further contention is that the tax effect at least in his case is less than Rs.4 lac, and even as per the prevailing circular of the Central Board of Direct Taxes, when the present appeals were filed, the tax effect being less than Rs.4 lac, the appeal at the instance of Revenue was not maintainable and deserves to be dismissed.

12. Mr. Vivek Singhal, learned counsel, contended that the Allahabad High Court in the case of *CIT Agra* v. *M/s. Divya Jewellers (P) Ltd.* (2014) 368 ITR 671, has held that earning by way of interest being proximate to the business activity of an exporter, it ought to be taken as in the nature of income from business. He also relied upon the judgment rendered in the case of *CIT* v. *M/s. Punjab Stainless Steel Industries* (2014) 364 ITR 144 (S.C.), and contended that the exporters play a vital role in earning of precious foreign exchange for the country and the Revenue should not

tinker with minor disallowances/claim when Section 80HHC primarily gives benefit to an exporter.

12.1 In support of their contentions, following judgments were also relied upon by the learned counsel for the assessees :-

Karnani Properties Ltd. v. (1971) CIT, 82 ITR 547

Rameshwar Prasad Bagla v. CIT, (1973) 87 ITR 421

Patnaik & Co. Ltd. v. CIT, (1986) 161 ITR 365

CIT v. Nagarjuna Steel Ltd., (1988) 171 ITR 663 (A.P. High Court)

Keshavji Ravji & Co. v. CIT, (1990) 183 ITR 1.

Thiru Arooran Sugars Ltd. v. CIT, (1997) 227 ITR 432.

K. Ravindranathan Nair v. CIT, (2001) 247 ITR 178.

13. We have heard the learned counsel for the parties, considered the material on record including the Larger Bench judgment of this court, as also other judgments relied upon by the counsel for the parties.

14. Though the arguments raised at the Bar by both the sides have already been considered by the Larger Bench of this Court and, prima facie, all the three questions which do emerge in the present set of reference / appeals / cross appeals, have been considered at length after analysing the latest judgments of the Hon'ble Apex Court on the subject, including judgments of this High Court as also of other High Courts, however, counsel for the assessees has tried to distinguish

the facts in the instant matters vis-a-vis the arguments advanced before the Larger Bench.

15. In our view, Section 80HHC allows deduction in a case where the assessee is primarily an exporter and is engaged in the business of export out of India of any goods or merchandise, and also receives foreign remittance/sale/export proceeds received in India or brought into India by the assessee in convertible foreign exchange. In our view, a deduction is allowable to an exporter of goods and none else.

16. The Tribunal while reversing the earlier view in DBIT Reference No.4/2003 and DBIT Appeal No.60/2003 insofar as the same assessee is concerned, observed that the Assessing Officer held that neither the interest income is profit derived by the assessee on export of goods or merchandise nor they have been in convertible foreign exchange as per provision of Section 80HHC, instead the income (interest) has been derived from advancing to various parties small amounts and is not a part of assessee's income from business entitled to deduction under Section 80HHC, and it further held that the assessee is entitled to deduction only in respect of profit derived by it from export of goods and merchandise and receipts of sale proceeds in convertible foreign exchange. The ITAT has also come to the conclusion that the intention

of the assessee was only to earn interest income, source of which is the advances and not that it is out of business of exports. It was further held that the derivation of income must be directly connected with the business in the sense that the income is generated by the business and it would not be sufficient if it is generated by exploitation of business assets and further held that the claim of the Revenue is correct in not treating the income from interest from surplus funds as business income, entitled to deduction under Section 80HHC and we also concur with the later findings of the ITAT.

17. In DBIT Appeal 52/2003 the Assessing Officer while disallowing deduction under Section 80HHC in respect of income received by way of interest, held that an assessee is entitled to deduction under Section 80HHC on the profits derived from export of goods or merchandise out of India and sale proceeds of which are to be received in convertible foreign exchange, and in the instant case the income is by way of export of jewellery and the interest being not received in convertible foreign exchange on export of goods (jewellery), such activity of advancing money to various miscellaneous parties, was not entitled for deduction under Section 80 HHC. The Tribunal further held that the nexus between the borrowed funds and money advanced on interest has not been established. Intention to do business has not also been proved

by placing any tangible evidence on record. Exploitation of business funds or earning interest does not constitute business. The interest income also cannot be held to be an incidental activity to export income, the receipt of interest and payment of interest are two different activities and we also concur with the same view.

18. In our view, though in one or two cases it has been held that interest received is in the nature of business income but ultimately a short question is as to whether where merely because interest has been held to be business income whether deduction under Section 80HHC is allowable or not?

19. In our view, no effort has been made by the assessees that the immediate source of receipt of interest as income is the amount advanced which were given as loan in the preceding years and not by realisation of exports. The assessees by and large have been found to have raised fresh loans whereas no new loan or advances have been given in the year under consideration. It is also an admitted fact that the assessees have also not redeemed majority of the loans advanced for its business purposes to several entities, and a finding has been recorded by the Assessing Officer that majority of the parties from whom interest was received continued to remain the same. Neither any

correspondence with any of the parties to whom loans are advanced, was produced so as to prove the purpose or intention of doing business.

20. In our view, and rightly so, intention of the assessees is well set that it only wants to earn interest from those funds which are lying idle with it or which can be spared as surplus in the business for earning income from the said source and a businessman will not keep funds idle and certainly an endeavour of a business man primarily is to earn maximum profits, that does not mean character of income changes merely because the assessee has taken such interest in the profit and loss account and projected it as business income, it does not mean that such receipt also enures for deduction under Section 80HHC of the Act.

21. Section 14 of the Income-tax Act, 1961 specifies distinct heads of income indicating the intention which are mutually & exclusive income derived from different sources falling under the specified heads, have to be computed for the purpose of taxation in the manner provided. To find out whether the activity in the case of an assessee constitute its business of money lending, we refer to the term 'business' defined under section 2(13) of the Income-tax Act, 1961. The definition reads as under :-

> "business" includes any trade, commerce or manufacture of any adventure or concern in the nature of trade, commerce or manufacture.

22. This Court in the case of Rajasthan Land Development Corporation (supra) at page 601 has observed as under :-

> "The word 'business' has been the subject mater of judicial scrutiny and interpretation and it has been held that it is of wider import which relates to real, substantial and systematic or organised course of activity or conduct with a set purpose. The frequency or continuity of the activity may in a certain set of circumstances be a desired factor but are not the conclusive or infallible test. An isolated transaction may also be a business."

23. It is, therefore, essential to advert to definition of the word 'purpose' and also to the word 'intention' as no provision has been brought to our notice from which the intent and purport to carry on the business of money lending could be inferred. In Black's Law Dictionary, Sixth Edition, the words 'purpose' and 'intention' have been defined as under :-

> <u>Purpose</u> : That which one sets before him to accomplish or attain; and end, intention, or aim, object, plan project. Term is synonymous with ends sought, an object to be attained, an intention etc.
>
> <u>Intention</u> : Determination to act in a certain way or to do a certain thing. Meaning; Will; purpose, design. "Intention", when used with reference to the construction of will and other documents, means the sense and meaning of it, as gathered from the words used therein. When used with reference to civil and criminal responsibility, a person who contemplates any result, as not unlikely to follow from a deliberate act of his own, may be said to intend that result, whether he desires or not."

> It is, therefore, the design, resolve or determination with which a person acts. It is all to be kept in mind that 'intent' and 'motive' are two different things and should not be confused. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done or omitted."

24. In our view, merely because the assessee contends that receipt of interest is income from business, or in one or two cases the finding being recorded by the Assessing Officer that it is business income, in support thereof no tangible evidence has been placed to prove the intention that the assessee carried these transactions of advancing loans, as business. Merely contending that the funds were of business and is a case of exploitation of business assets, thus would be income from business cannot be intended at least for deduction under Section 80HHC. Derivation of income must be directly connected with the business in the sense that the income is generated from business. It would not be sufficient if it is generated by exploitation of business asset. In the instant matters, the income by way of interest on the deposits/advances is no doubt an income derived by investing surplus cash of the assessee generated as profits of exports, but it is not the money derived from the business activity on export as an exporter. It is also not established that carrying on business of export is connected with or dependant upon such advances or loans given by it, and as such it cannot be termed that earning of interest on such loans was incidental to business of export.

25. In our view, the assessees are not engaged in the activity of advancing money as a business activity nor loans advanced constitute an incidental activity to the business of exports of the assessee. Irresistible conclusion, therefore, is that the earning of interest by an assessee on sums advanced does not come within the purview of business income, or as profits from business.

26. This court in the case of *CIT* v. *Rajasthan Land Development Corporation* (supra) had, while answering the reference in favour of the Revenue and against the assessee, laid down following principles:-

> "(i) interest on fixed deposits and other deposits before the commencement of the business is income from other sources,
>
> (ii) income from interest on deposits of surplus money during the construction period is also to be considered/treated as income from other sources,
>
> (iii) interest income in respect of surplus money, not required for business and deposited in bank or person, as idle money, for safe keeping, would be assessable as income from other sources. If the income from interest is from a fund which has been brought as surplus capital, it would be assessable as income from other sources,
>
> (iv) in respect of investment of surplus funds there is divergence of opinion between different High Courts and this court in the case of *Murli Investments Co.* held that if the surplus funds are invested instead of keeping them idle, the income by way of interest should be treated as income from other sources,
>
> (v) if the surplus funds emerge out of business carried on by the assessee which is regularly carried on by the

> assessee and then with the intention to carry on the business of lending of money or money-lending the loan is advanced, the income therefrom would be income from business. The intention has to be gathered with reference to all the activities of advancing money which should be permitted by the objects of the company and also by the resolution of the board of directors to carry on the business of money-lending or lending of money."

27. In our view when we analyse the above principles with the facts of the present matters, none of the principles support the contention raised by the counsel for the assessees, except that only clause (v) may to a certain extent support the contention of the assessees, but then it is a case of a Limited Company and not an individual or a partnership firm, as in the instant cases. Even otherwise, it does not support the contention of the counsel for the assessees.

28. In the present set of facts, the principle in paras (iii) and (iv) does not support the case of the assessees, but rather goes against the assessees as admittedly it is interest income in respect of surplus money, it was held that the surplus funds are invested instead of keeping them idle, the income by way of interest is to be treated as income from other sources. The principles in paras (i) and (ii) are also inapplicable but does not support the assessee either.

29. In the above case, judgment of Murli Investment Company

rendered by this court (supra), was relied upon where it has been held as under:-

> "After considering the entire material on record, the Tribunal arrived at the finding that in the facts of the present case, the company was investing its surplus funds and was deriving interest thereon, instead of keeping that idle. Such transactions could not be said to constitute money-lending business. The Tribunal further held that after purchasing the property, the assessee-company had approximately Rs. 20,000 as surplus with it. It was invested by it instead of keeping it idle. When the money was needed for making alterations to the property and for making repayment to the creditors, it was withdrawn by the assessee-company and the funds were utilised for the aforesaid purposes. The Tribunal held that such activity would not constitute business. The company merely invested its funds when they were not required by it for the time being. As such the income from such investment cannot be assessed as business income. The Tribunal has further held that such income would be assessable only under section 56 of the Income-tax Act, 1961. Mr. Sharma, learned counsel for the assessee was unable to show any authority taking a contrary view nor was he able to show any error in the order of the learned Tribunal."

30. This court, again in the case of *CIT* v. *M/s Avon Apparels* [D.B. ITA No.41/1999 dated 11.7.2002, (Rajasthan High Court)], held that "the income of the assessee earned on account of interest on surplus funds in India, the assessee is not entitled for deduction on that income under Section 80HHC of the Act, 1961".

31. The Larger Bench of this court has taken into consideration the judgment of CIT v. Shri Ram Honda Power Equip (supra) which by and

large has touched the controversy in hand and the said judgment of Delhi High Court has taken into consideration the fact about deduction under Section 80HHC of allowing a claim similar to the present controversy, and after examining the controversy has come to the conclusion that the issue has been considered taking into note the judgments rendered by the Hon'ble Apex Court in the case of *Tuticorin Alkali Chemicals and Fertilizers Ltd.* v. *CIT* (1997) 227 ITR 172, *Cambay Electric Supply Industrial Co. Ltd.* v. *CIT* (1978) 113 ITR 84, *CIT* v. *Sterling Foods* (1999) 237 ITR 579, *Pandian Chemicals Ltd.* v. *CIT* (2003) 262 ITR 278, and has come to the conclusion that deduction under Section 80HHC is not allowable, and in our view, the judgment of Shri Ram Honda Power Equip (supra), so also Rajasthan Land Development Corporation (Supra), Murli Investment Company (supra) and Avon Apparels (Supra), apply to the facts of the instant case with full force and we, after analysing the facts in the instant reference/appeals so also judgment of Larger Bench hold that interest received/earned does not enure for deduction under Section 80HHC.

32. Counsel for the assessee Mr. Borad in DBIT Appeal No.28/2005 (CIT v. M/s Chordia Gems), as noticed earlier, had also raised point that in this case while interest has been received so also interest has been paid and only net is required to be considered. However, this question

does not arise for our consideration inasmuch as the following questions were admitted in D.B. ITA No.28/2005 :-

“i) Whether on the facts and circumstances of the case, the ITAT was right and justified in treating the interest income of Rs.9,67,366/- as business income of the assessee?

ii) Whether on the facts and circumstances of the case, the ITAT was right and justified in allowing the deduction under Section 80HHC of the Act of 61 on the interest income of Rs.9,67,336/- and in holding that there is no infirmity in the order of the CIT(A)?

iii) Whether on the facts and circumstances of the case, the finding of the I.T.A.T. is perverse, contrary to the record and untenable in the eye of law?”

There is no cross appeal or cross objection at the instance of the assessee on this point about netting of interest, and question of answering this issue now raised does not arise.

32.1 Be that as it may, we have also gone through the orders of the Assessing Officer, the order of the CIT (Appeals), and also order of the Tribunal, and before all the three authorities the only question was claim of deduction on interest under Section 80HHC and even before the said authorities this issue was never raised nor was there any ground in appeal before ITAT, which has been raised now in the instant appeal at this stage.

32.2 Even otherwise, once substantial questions have been answered by the Larger Bench of this court, quoted in para 7 of this judgment in identical circumstances, the issue remains no more res

integra to be adverted any further.

32.3 Mr. Borad has also raised a point that insofar as his appeal DBIT Appeal No.28/2005 is concerned, the tax effect is less than the amount stipulated in the circular of the Central Board of Direct Taxes, as it stood then i.e. Rs.4 lac, and he has contended that since the tax effect being less than Rs.4 lac, the appeal preferred by the Revenue should be dismissed.

32.4 We have considered the arguments of the counsel for the assessee and in our view, mere tax effect may not come in the way to leave the substantial question of law unanswered.

32.5 Similar issue also came up before this court in the case of CIT v. M/s Udaipur Mineral Development Syndicate (P) Ltd., (D.B. Income Tax Reference No.32/1995 decided on 12.11.2014), and after considering judgments of this court in the case of *CIT* v. *Rajasthan Patrika Ltd.* (2002) 258 ITR 300, *CIT* v. *Registhan (P) Ltd.* (2004) 186 CTR 260, and also the Full Bench judgment rendered by the Punjab & Haryana High Court in the case of *CIT* v. *Varindera Construction Co.* (2011) 331 ITR 449, and of the Apex Court in the case of *CIT* v. *Surya Herbal Ltd.* (2013) 350 ITR 300 (SC) it was held ad infra :-

> “Thus, we are of the view that once reference has been admitted by this Court u/s 256(1) or 256(2), then the matter cannot be disposed off merely because the tax effect is minimal. We dissent with the view expressed by the Bombay High Court and M.P. High Court, relied upon by counsel for the assessee as the judgment rendered by this

> Court in Rajasthan Patrika Ltd. (supra) and Registhan (P) Ltd. (supra) is binding on us on the self same issue and we would choose to follow the view rendered by this court. In our view, once a reference application of the Revenue had been allowed by this court and reference was called at the instance of this Court, the question of law framed has to be answered on merits, thus the preliminary objection of the counsel for the assessee is rejected."

32.6 In our view, though the above speaks of a IT reference as it then was, but it will be equally applicable on Appeals filed under Section 260(A). Accordingly, the contention of Mr. Borad deserves rejection.

33. In ultimate analysis, for the reasons aforesaid all the questions are answered in favour of the Revenue and against the assessees, with no order as to costs.

(J.K. Ranka) J. (Ajay Rastogi) J.

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[All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.]
Deepankar Bhattacharya
PS