

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

Tax Case (Appeal) No.993 of 2005

M/s.Carborundum Universal Ltd.

28, Rajaji Salai

Chennai-600 001.

.. Appellant

versus

The Deputy Commissioner of Income Tax

Special Range VI

Chennai.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal "A" Bench, Madras dated 17.7.2001 made in I.T.A.No.2426/92.

For appellant : Mr.R.Vijayaraghavan

For respondent : Mr.T.R.Senthil Kumar
Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The assessee is on appeal against the order of the Income Tax Appellate Tribunal relating to the assessment year 1989-90, raising the following substantial questions of law:

1. Whether on the facts and circumstances of the case the Tribunal is right in holding that deduction under Section 32AB has to be allowed from the profits for the purpose of determining the relief under Section 80HH and 80I?
2. Whether on the facts and circumstances of the case the Tribunal ought not to have held that relief under Section 32AB relatable to Plant and Machinery installed in other units should not be deducted from the profits of the new industrial undertakings for the purpose of computing relief under Section 80HH and 80I?
3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that depreciation on guest house building has to be disallowed as per Section 37(4) of the Income Tax Act, 1961?

2. As far as the third substantial question of law is concerned, learned counsel appearing for the appellant fairly submits before this Court that the said issue is covered against the assessee by reason of the decision of the Supreme Court reported in [2005] 278 ITR 546 (Britannia Industries Ltd. Vs. Commissioner of Income-tax). Hence, this Tax Case Appeal stands rejected as far as the third substantial question of law is concerned.

3. The first two substantial questions of law raise a common issue as to the computing of the relief under Section 80HH and 80I.

4. There is no dispute over the fact that the assessee company is eligible for deduction under Section 80HH and 80I as well as investment deposit allowance under Section 32AB of the income Tax Act. While computing the deduction under Sections 80HH and 80I, the Assessing Authority reduced the profits of the newly formed industrial undertakings by making deduction under Section 32AB and rejected the assessee's contention that there could be no deduction under Section 32AB while computing the eligible profits and gains for the purpose of working out the deduction under Section 80HH and 80I of the Income Tax Act. The assessee further contended that the relief under Section 32AB in respect of machinery installed in the units have nothing to do with the eligible business falling for consideration under Section 80HH and 80I.

5. In considering the claim of the assessee, the Commissioner of Income Tax (Appeals) pointed out that the claim of the assessee for exclusion of investment deposit allowance from the gross total income of the new industrial undertaking is contrary to the decision of the Supreme Court reported in [1985] 155 ITR 120 (Distributors (Baroda) P. Ltd. Vs. Union of India). Aggrieved by this, the assessee went on appeal before the Tribunal, which confirmed the view of the authorities below. The Tribunal referred to the decision of this Court reported in [2000] 245 ITR 605 (CIT Vs. Sundaravel Match Industries (P) Ltd.) and held that special deduction has

to be computed in respect of the total income calculated under the provisions of the Act. Aggrieved by this, the assessee is on appeal before this Court.

6. Learned counsel appearing for the assessee pointed out that while there is no dispute as regards the computation of the gross total income of the assessee in accordance with the provisions of the Act, the deduction, to be considered under Chapter VI-C, particularly with reference to Section 80HH, has to be with reference to the profits and gains 'derived' from the industrial undertaking. Thus the deduction granted under Section 80HH to the extent of 20% has to be computed on the profits and gains derived from the industrial undertaking. In other words, the computation has to be confined to those profits and gains which have a direct nexus to the industrial activity of the industrial undertaking. He further pointed out that Section 32AB relief is granted on the book profits. However, in respect of the gross total income, for the purpose of considering the deduction, it has to follow the definition as per Section 80B(5). Once the gross total income is in accordance with the provisions of the Act, the deduction under the respective provision has to follow the phraseology used in the particular deduction Section. Thus by applying Section 80AB to Section 80HH, the profits and gains of the undertaking that has to be computed for the purpose of working out the deduction under Section 80HH are those that have a direct nexus to the income derived from an industrial undertaking. In this connection, learned counsel referred to the decision reported in [2009] 317 ITR 218 (Liberty India Vs. CIT) (SC) to contend that the connotation of the words "derived from" is narrower as compared to that of the words "attributable to" and the profits and gains derived from the industrial undertaking under Section 80HH for the purpose of granting the relief to the extent of 20% deduction must cover sources not beyond the first degree. Since the relief under Section 32AB is not falling under the first degree of source, the question of including Section 32AB as part of the profits and gains does not arise. Thus the inclusion of income as profits and gains of business must follow the terminology used under the particular provision. Thus, read in the context of the decision of the Apex Court reported in [2009] 317 ITR 218 (Liberty India Vs. CIT) (SC) as well as [2004] 266 ITR 521 (IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax) (S.C.), he submitted that the Tribunal committed a serious error in rejecting the appeal. He further submitted that the relief under Section 32AB has nothing to do with the profits and gains derived from the industrial undertaking.

7. Per contra, learned Standing Counsel appearing for the Revenue supported the order of the Tribunal and submitted that in the computation of profits and gains of an industrial undertaking, for the purpose of granting relief under Section 80HH, the guiding factor is the provision given under Section 80AB of the Income Tax Act. Hence, no fault could be found in the order of the Tribunal.

8. Heard learned counsel appearing on either side and considered the materials placed on record.

9. In the decision reported in [2004] 266 ITR 521 (IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax) (S.C.), the Apex Court considered the provisions under Section 80AB on the issue relating to deduction under Section 80HHC. Pointing out that Section 80AB

is given an overriding effect by the expression "notwithstanding anything contained in that Section", the Apex Court held:

" 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 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. "

10. In the decision reported in [2009] 317 ITR 218 (Liberty India Vs. CIT) (SC), the Apex Court pointed out that Section 80HH and 80IB restrict the relief of deduction to a specific percentage of the profits derived from such industrial undertaking after the specified date. Pointing out to the importance of the phrase "derived from" the industrial undertaking as against the profits and gains "attributable to" the industrial undertaking, the Apex Court further held that the connotation of the words "derived from" is narrower as compared to that of the words "attributable to". The use of the expression "derived from" clearly point out the intention of the Parliament to cover sources not beyond the first degree. Thus on the question as to whether DEPB and duty drawback receipts would fall under the first degree source for the purpose of considering the same as part of the profits derived from the eligible business under Section 80IB, the Apex Court held that such profits belong to the category of ancillary profits of such undertakings. Extending the law laid down in the above-said decisions to the provision thus available under Section 80HH, we have no hesitation in accepting the case of the assessee.

11. A reading of Section 80HH shows that from the gross total income, deduction at a particular percentage is granted under the said Section to the eligible assessee from the profits and gains derived from that industrial undertaking. Thus, what is given as deduction is the profits and gains derived by the industrial undertaking, subject to the industrial undertaking satisfying other qualifications.

12. As already seen, the phrase "derived from", being narrower and in contradistinction to the term "attributable to" income which do not have a direct nexus to the industrial undertaking, cannot be regarded as having been derived from the industrial undertaking.

13. In the context of the claim under Section 80HH, 80HHC and 80I, in the decision reported in [2002] 258 ITR 749 (Commissioner of Income-tax v. N.S.C. Shoes), this Court held that interest received on deposits cannot be regarded as income derived from industrial undertaking, since the direct and proximate link of the deposits is with the deposit in the Bank and not with the industrial undertaking.

14. It is no doubt true that while calculating the gross total income of the assessee, the same is done as per the definition under Section 80B(5). In the background of the scheme of deduction under Chapter VIA and the decisions of the Apex Court, particularly on Section 80AB, we have no hesitation in accepting the plea of the assessee that the relief under Section 32AB,

relatable to plant and machinery installed in other units, could not be deducted from the profits of the new industrial undertaking for the purpose of computing the relief under Section 80HH and 80I.

15. Even though learned Standing Counsel appearing for the Revenue pointed out that the calculation has to follow the provisions of the Act, yet, as already pointed out, when what goes for deduction under Chapter VIA is the eligible profits and gains, it has to have relevance to the profits and gains derived from an industrial undertaking and it has to be essentially of those profits and gains, having direct nexus to the industrial undertaking, which alone are taken into a consideration for the purpose of working out the relief under Section 80HH. Thus, what is to be included for the purpose of working out the gross total income is not the same as what is to be computed as profits and gains derived by the eligible industrial undertaking.

16. On the clear-cut language of the Section thus looked at and guided by the decisions referred to above, we have no hesitation in holding that in computing the profits and gains derived from the industrial undertaking for the purpose of relief under Section 80HH and 80I, relief under Section 32AB ought not to have got into the reckoning. In the circumstances, we agree with the submission of the learned counsel appearing for the assessee and set aside the order of the Tribunal to hold that the deduction under Section 32AB ought not to have been considered in working out the profits and gains of the undertaking for the purpose of determining the deduction relief under Section 80HH and 80I. Hence, as far question No.1 and 2 are concerned, we allow the assessee's Tax Case Appeal.

In the result, this Tax Case Appeal stands partly allowed. No costs.

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To

1. The Income Tax Appellate Tribunal "A" Bench, Madras.
2. The Commissioner of Income Tax (Appeals)-V, Madras-34.
3. The Deputy Commissioner of Income Tax, Special Range-VI,
Madras 600 034

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CHITRA VENKATARAMAN,J
and
K.RAVICHANDRA BAABU,J

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

We delivered the judgment in the above appeal on 4.6.2012. We held therein that in computing the profits and gains derived from the industrial undertaking for the purpose of grant of relief under Sections 80HH and 80I, relief under Section 32AB could not be included. After the delivery of the judgment, learned standing counsel appearing for the Revenue placed before us on 8.6.2012, the unreported decision of this Court rendered in T.C.(A) Nos.800 of 2004 and 175 to 177 of 2005 by order dated 13.3.2012, wherein similar question came up for consideration before this Court on the includability of the allowance under Section 32AB for the purpose of working out the relief under Sections 80HH and 80I. Having regard to the same, we reposted the case for hearing the learned counsel and accordingly after hearing the learned counsel on either side today, we pass this supplemental order. A reading of the above referred unreported decision shows that this Court referred to the following Apex Court decisions:-

1. MOTILAL PESTICIDES INDIA PRIVATE LIMITED v. COMMISSIONER OF INCOME TAX (2000) 243 ITR 26,
2. H.H.SIR RAMA VARMA v. COMMISSIONER OF INCOME TAX (1994) 205 ITR 433,
3. SYNCO INDUSTRIES LTD v. ASSESSING OFFICER AND ANOTHER (2008) 299 ITR 444,
4. COMMISSIONER OF INCOME TAX v. SHIRKE CONSTRUCTION EQUIPMENT LTD., (2007) 291 ITR 380,
5. M/S.ACG ASSOCIATED CAPSULES PVT. LTD v. THE COMMISSIONER OF INCOME-TAX, CENTRAL IV, MUMBAI 2012 (2) SCALE 374 and
6. DISTRIBUTORS (BARODA) P. LTD v. UNION OF INDIA AND OTHERS 155 ITR 120.

This Court also referred to the decisions of other High Courts viz.,

1. COMMISSIONER OF INCOME TAX v. ALBRIGHT MORARJI & PANDIT LTD., 236 ITR 914 (BOMBAY)
2. VIJAY INDUSTRIES v. COMMISSIONER OF INCOME TAX (2004) 270 ITR 175 (RAJASTHAN)
3. COMMISSIONER OF INCOME TAX v. MAHAVIR SPINNING MILLS LTD., (2007) 293 ITR 492 (P & H)
4. MAHAVIR SPINNING MILLS LIMITED v. COMMISSIONER OF INCOME TAX (2008) 304 ITR 371 (P & H).

2. After referring to the above-cited decisions, this Court came to the conclusion that for the purpose of working out the deduction under Section 80 HH, Section 32AB had to be construed as part of the profits and gains of the industrial undertaking. In other words, the relief granted under Section 32AB would also form part of the profits and gains of the industrial

undertaking and would not be deducted from the profits and gains of the industrial undertaking in computing the deduction under Section 80HH of the Income Tax Act.

3. We have perused the unreported judgment of this Court and reposted the case for hearing. Accordingly, learned counsel for the assessee as well as learned Standing Counsel for Revenue placed their respective submissions.

4. Reiterating the contentions made earlier, learned counsel for the assessee placed reliance on the decision of the Apex Court reported in 317 ITR 218 LIBERTY INDIA v. CIT. and submitted that in contradistinction to the computation of income for granting deduction under Chapter VIA, the deduction under Section 32AB is made on the overall income of the business of the assessee. Thus, Section 32AB cannot get into the reckoning of the profits and gains of the industry for the purpose of working out the deduction under Section 80HH and 80I. He further pointed out that the unreported decision had not considered the Apex Court's decision reported in 317 ITR 218 LIBERTY INDIA v. CIT., which would govern the issue herein. Thus, what is to be included as profits and gains of the industrial undertaking has to be decided in the context of use of the expression 'derived from' in the said Section 80HH, which means, all those profits and gains which come within the first degree of source alone has to be considered and not any other income of the industrial undertaking.

5. As far as reliance placed on the decision of the Apex court reported in 317 ITR 218 LIBERTY INDIA v. CIT. is concerned, we agree with the assessee's contention that the order in T.C.Nos.800 of 2004 and 175 to 177 of 2005 dated 13.3.2012 did not make any reference to the decision of the Supreme Court, which essentially deals with Sections 80AB, 80-I and 80-IA of the Income Tax Act.

6. Before going into the rival contentions herein, it is better to extract the provisions contained in Section 80AB and 80B(5) which 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.

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

7. Section 80AB deals essentially about how the income qualifying for deduction under a particular Section in Chapter VI A has to be reckoned. Section 80B(5) speaks about the gross total income of the assessee. In considering the question as to what would be the income which qualifies for deduction under various deduction provisions under Chapter VIA, one has to compute the same in accordance with the provisions of the particular deduction provision. Thus,

80AB states that the answer lies in the particular deduction provision under Chapter VI A itself, that the income which qualifies for deduction is the amount of income of that nature which is derived or received by the assessee and included in the gross total income. Once this is identified, then this income which qualifies for deduction has to be computed in accordance with the provisions of the Act.

8. In the decision reported in 317 ITR 218 LIBERTY INDIA v. CIT., the Apex Court pointed out that the Act provides for two types of tax incentives, namely, investment-linked incentives and profit-linked incentives. Chapter VI-A which provides for incentives in the form of tax deductions essentially belongs to the category of 'profit-linked incentives'. To find out what are the profit-linked incentives that qualifies for deduction, the answer is that it is that amount of income of the nature which qualifies for deduction. On a reading of Section 80AB with Section 80HH of the Income Tax Act, it is clear that income qualifying for deduction has to be one which has an intimate, direct nexus to the industrial activity of the qualified industrial undertaking.

9. In the decision reported in 161 ITR 320 COMMISSIONER OF INCOME TAX v. CANARA WORKSHOPS P. LTD., the Apex Court, on very simple terms, pointed out how the benefit under Chapter VI A is worked out in the context of relief under Section 80-E, which may be of relevance to other deduction provisions too. The Apex Court pointed out that the assessee must be a company which satisfies the eligibility criteria as provided for in that particular Section. The total income as computed in accordance with the 1961 Act, should include profits and gains attributable to the business of the assessee concerned or the industry mentioned. Thus, the total income as computed in accordance with the Income Tax Act, 1961, without taking into regard the provisions of Section 80E, should include profits and gains attributable to the business or the industry mentioned in that Section. Thereafter, on the profits and gains attributable to or derived by such qualifying business of the eligible industry, deduction is allowed and effect is given to deduction in computing the total income of the company.

10. In the above-said decision reported in [1986] 161 ITR 320 (Commissioner of Income-tax v. Canara Workshops P. Ltd.), in the context of the deduction made under Section 80E, the Apex Court pointed out that in computing the profits for the purpose of deduction under Section 80E, loss incurred by the assessee in the priority industry in the manufacture of alloy steels could not be set off against the profits of the manufacture of another priority industry. Thus the Apex Court held that the assessee was entitled to deduction at 8% on the entire profits of the automobile industry, included in the total

income without deducting therefrom the losses of the alloy steel manufacture.

11. Thus, Section 80AB has relevance with reference to the third stage of computing the profits and gains of the industry which qualifies for deduction under particular deduction provision under Chapter VI A of the Act. Thus computing the income for deduction, "the amount of income of that nature" as given under the particular deduction provision is computed in accordance with the Act before making any deduction under this Chapter which is included in his gross total income and this alone is deemed to be the amount of income of that nature which

is derived or received by the assessee. Applying the decision of the Apex Court reported in 317 ITR 218 LIBERTY INDIA v. CIT., we have no difficulty in holding that what has been considered under Section 32AB may get into reckoning of the income derived by the assessee under Section 80AB for the particular industrial undertaking, if and only the said income is out of the profits and gains of the eligible industrial undertaking as stated in the said deduction provision.

12. Thus, as pointed out by the learned counsel for the assessee, the amount which goes for investment deposits account is worked out from the profits and gains of the business or profession, which means, the total receipts of profits and gains of the business or profession is considered to work out the relief under Section 32AB. Thus this may include all those income which may not qualify as profits and gains of the particular industrial undertaking for deduction, it being not derived from the industrial activity of a particular industrial undertaking for deduction under Section 80HH in the sense of not having direct nexus to the industrial activity of the undertaking. Learned counsel for the assessee pointed out that working out relief under Section 32 AB is based on the book profit computed in accordance with the provisions of Rule 36 of the Companies Act. Hence, income considered for Section 32 AB cannot be included in the income of the nature which qualified for deduction under Section 80HH.

13. We do not think that the Book profit computation as per the Companies Act should be taken as a good ground to exclude the same in working out the relief under Section 80HH of the Act, for the simple reason that, as per Section 80AB, the amount of income which goes for deduction is the income of that nature given under the particular deduction provision computed in accordance with the provisions of the Act, before making any deduction under Chapter VIA. The fact that calculation of Section 32AB relief is worked out as per the Book profit computed in accordance with the Companies Act, does not mean that there is no computation under the provisions of the Income Tax Act. All that the Act seeks to do in considering Section 32AB relief is that it borrows book profit computation done as per the Companies Act and work out the relief. In the above circumstances, if in the working of the relief, book profits include the eligible profits of the qualifying industry as specified in the deduction provisions under Chapter VIA, then that portion of the profits and gains of the qualifying industry derived by it in its industrial activity has to necessarily get into the computation of the profits and gains derived by the industrial undertaking as given under Section 80AB of the Income Tax Act. A comparative reading of Sections 32AB and 80AB, particularly with Section 80HH, shows that for the purpose of Section 32AB, it is the profits and gains of business or profession which would include the profits and gains of the particular eligible industry qualifying for deduction and these incomes which may not come within the zone of consideration while computing the relief for the eligible industry under Chapter VIA. Thus, as far as Section 80HH is concerned, What is considered as income of the eligible industry under Section 80HH would be the profits and gains derived from the industrial undertaking, the income having a direct nexus to the activity of the undertaking. Income which do not fall within the first degree of source not being derived from the industrial activity are necessary excluded while computing the relief under Section 80HH. Thus, while working out the profits and gains which qualify for deduction under Section 80HH, one has to necessarily restrict the income which is derived from the industrial undertaking and nothing beyond. Thus, for the purpose of Section 80HH, the income of that industrial undertaking which

got into the reckoning of the book profit for the purposes of Section 32AB has to be identified and that alone would be included in the profits and gains of the industrial undertaking for the purpose of working out the relief under Chapter VI A.

14. We have already referred to the decision of this Court reported in 258 ITR 749 COMMISSIONER OF INCOME TAX v. NSC SHOES in the earlier order, which relates to the claim of deduction under Sections 80HH, 80HHC and 80I. This Court pointed out that in so far as the deductions under Sections 80HH and 80I are concerned, the income which has direct nexus with industrial undertaking alone has to be regarded as income derived from the industrial undertaking. This Court held that the interest received on the deposits which were made for the purpose of opening a Letter of Credit for the purpose of import of material, cannot be regarded as income derived from the industrial undertaking. This Court pointed out that direct and proximate link of the deposits is with the deposit in the Bank and not with the industrial undertaking; hence, cannot be included in the working out of profits and gains for the calculation of deduction under Section 80HH of the Income Tax Act.

15. Insofar as Section 80HHC is concerned, this Court made the distinction pointing out to Section 80HHC(3) as it stood during the relevant assessment year 1986-87, which included profits made out of export of goods with the profits and gains of the business or profession. This Court pointed out that interest derived from the bank deposits included in the computation and had been assessed under the head of "profits and gains of the business or profession" will have to be regarded as having been derived from export effected by the assessee. Thus this Court held that interest on the deposits has to be included for the purpose of computing the deduction under Section 80HHC. Extending the law declared in the said decision to the contention made by the assessee herein, we hold that considering the narrow concept of the profits and gains under Section 80HH as the profits and gains derived from the industrial undertaking and the larger concept of profits and gains of the business or profession available under Section 32AB, as far as the calculating the income of the industry which goes for deduction under Section 80HH is concerned, we should include such of those profits and gains of the industry considered under Section 32AB, which has direct nexus with the industrial undertaking alone and nothing beyond, which means, the entirety of the income included for the purpose of Section 32AB cannot be included in the "profits and gains by the industrial undertaking".

16. In the light of the above reasoning, we hold that not all the profits and gains of the assessee's business forming part of Section 32AB, would be included under Section 80HH. For the purpose of deduction under Section 80HH and 80I, necessarily one has to undertake the exercise of identifying from the book profits, the income derived from the industrial undertaking qualifying for relief under Section 80HH, included in the working of Section 32AB of the Income Tax Act so as to consider it for computation as per Section 80AB.

17. To find out the same, we remit the matter to the Assessing Officer with a direction that keeping in the background the decision of the Apex Court reported in 317 ITR 218 LIBERTY INDIA v. CIT. and the decision of this Court reported in 258 ITR 749 COMMISSIONER OF INCOME TAX v. NSC SHOES., the profits and gains derived by the

assessee considered for working out the relief under Section 32AB of the Act shall be identified for the purpose of computing the relief under Sections 80HH and 80I. To this extent alone, the order passed by us on 4.6.2012 stands modified.

18. Learned standing counsel appearing for the Revenue submitted that he placed the unreported decision of this Court rendered in T.C.(A) Nos. 800 of 2004, 175 to 177 of 2005 by order dated 13.3.2012, only on account of the similar issue considered therein. As already pointed out, since the decision of the Apex Court reported in 317 ITR 218 LIBERTY INDIA v. CIT. and this Court in 258 ITR 749 COMMISSIONER OF INCOME TAX v. NSC SHOES have not been considered by this Court in the unreported decision and the same had not been placed before the other Bench for its consideration, we once again heard the learned counsel on either side in full and we have no hesitation in holding that the entirety of the allowance under Section 32AB cannot be included as a routine manner in the profits and gains of the industrial undertaking derived for the purpose of considering the deduction under Section 80HH and 80I and that out of the total allowances, only that portion of the income which has direct nexus with the industrial undertaking alone could be considered under Section 80AB to work out the relief under Section 80HH and 80I. In the background of the decision of this Court reported in 258 ITR 749 COMMISSIONER OF INCOME TAX v. NSC SHOES and the Apex Court's decision in 317 ITR 218 LIBERTY INDIA v. CIT., we do not find that there exists any necessity for referring the case for consideration before the Full Bench. Even though learned standing counsel for the Revenue does not seek this we are duty bound to state this while considering the effect of the said unreported decision and our decision which is based on the Apex Court's decision.

19. In the circumstances, the Tax Case (Appeal) is disposed of with the above direction.

11.06.2012

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