

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5539/2004

COMMNR. OF INCOME TAX COCHIN

Appellant(s)

VERSUS

M/S HARRISON MALAYALAM LTD.

Respondent(s)

(with office report)

Date : 10/04/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Dhruv Mehta, Sr. Adv.  
Ms. Rekha Pandey, Adv.  
Ms. Gargi Khanna, Adv.  
Mrs. Anil Katiyar, Adv.  
Mr. B. V. Balaram Das, Adv.

For Respondent(s)  
Mr. K. Rajeev, Adv. (NP)

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is disposed of in terms of the signed  
order.

(SUMAN WADHWA)  
AR-cum-PS

(SUMAN JAIN)  
COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5539 OF 2004

Commnr. Of Income Tax, Cochin

Appellant(s)

VERSUS

M/s. Harrison Malayalam Ltd.

Respondent(s)

O R D E R

Respondent Assessee is a public Limited Company engaged in growing and manufacturing tea besides trading activities. The assessee had an export turnover of Rs.7,24,99,271/-. The total turnover of the assessee came to Rs.40,82,91,806/-. The Assessee had exported tea and had received sale proceeds in foreign exchange. The assessee claimed that the profits derived from export should be computed in accordance with clause (b) of Sub Section (3) of Section 80 HHC.

For the Assessment year 1987-88, Respondent claimed the deduction u/s 80HHC to the extent of Rs.16,27,562/-. The deduction was restricted to the profits derived from export. For this purpose, the profit derived from export had been calculated in accordance with sub section (3) of Section 80 HHC. However, the provisions of Section 80 AB was also applicable.

While completing the assessment u/s 143 (3), it was found that there was a loss from Kerla Tea and only a small profit from Tamil Nadu Tea. The Net result of trading in tea was a loss. The business income included in the total income is actually the income from the other activities & income from services rendered, after setting off the losses from tea. Ld. Assessment Officer vide its order dated 19.3.1990 held that the deduction is not permissible, as Section 80AB is to be applied.

Aggrieved, Respondents approached before the office of Commissioner (Appeal). Ld. Commissioner vide its order in appeal dt. 29.8.1999 appeal was partly allowed in respect that the assessing officer was not justified in estimating the value of unyielding rubber trees as on 1.1.1974 at Rs.100/- and according to the appellant it cannot be less than Rs.200/-. However, he dismissed the appeal on the grounds pertaining to the claim of reduction of Rs.16,27,562/-.

Aggrieved, Respondent filed an appeal before income Tax Appellate Tribunal. Ld. Tribunal vide its order dt. 2.7.1997 allowed the claim of the Respondent Assessee by holding that Section 80AB has no application to a case covered by Section 80 HHC of the Act.

Aggrieved, Appellant filed an appeal before High court. High Court vide its impugned judgment and final order dated 12.3.2003 dismissed this appeal and affirmed the decision of the Tribunal.

No body is present on behalf of the respondent assessee. We have heard learned senior counsel appearing for the appellant Mr Dhruv Mehta. He has drawn our attention to the recent judgment rendered by this very Bench in the case of Jeyar Consultant & Investment Pvt. Ltd. vs. Commnr. Of Income Tax, Madras reported in 2015 (4) SCALE 410 wherein it is categorically held that to avail the benefit of Section 80 HHC of the Income Tax Act there has to be positive income from the export business. The said judgment in our opinion squarely covers the \*- present case. The order of the High Court is accordingly set aside and the order of the Assessing Officer is restored.

The appeal is accordingly disposed of.

.....J.  
(A.K.SIKRI)

.....J.  
(ROHINTON FALI NARIMAN)

New Delhi;  
Date: 10.4.2015.