IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 601 of 2022

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 3

Versus

M/S. RECKITT BENCKISER HEALTHCARE INDIA LTD.

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Appearance:
MRS KALPANA K RAVAL with MR KARAN SANGHANI for the Appellant(s) No. 1
MR DHINAL A SHAH with MR RAVIRAJ SINGH for the Opponent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 03/01/2023

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1 It is an appeal under section 260A of the Income Tax Act, 1961, ("the Act" for short) where the challenge is made to the order of the Income Tax Appellate Tribunal (ITAT), Ahmedabad "B" Bench for the Assessment Year 2009-10 dated 16.03.2022.

2 Aggrieved and dissatisfied by the order of the ITAT, the Revenue has preferred the present appeal raising the following substantial questions of law:

> "[A] Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.1,32,64,686/- made on account of disallowance of deduction on foreign exchange gain u/s.80IC of the Act?
>
> [B] Whether the Appellate Tribunal has erred in law and

on facts in deleting the disallowance of Rs.35,59,463/- made on account of disallowance of deduction on exports benefits u/s.80IC of the Act?"

[C] Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.14,26,979/- made on account of disallownance of deduction on scrap value u/s.89IC of the Act?"

3 We have heard Mrs.Kalpana Raval, learned Senior Standing Counsel assisted by Mr.Karan Sanghani, learned advocate for the appellant and Mr.Dhinal Shah, learned advocate assisted by Mr.Raviraj Singh for the respondent.

4 The return of income for the Assessment Year 2009-10 was filed by the assessee declaring the total income of Rs.14,66,29,789/- and the book profit under section 115JB of the Act of Rs.64,90,33,459/-. The assessee furnished its Transfer Pricing Report under section 92E read with Rule 10D in Form No.3CEB on 30.09.2009. Notice under section 143(2) of the Act had been issued.

5 Miscellaneous income of the assessee comprised of scrap income generated during the manufacturing process. The income from scrap sale generated

through production process, since reduced the cost of production, the same was held to be in direct nexus with the business income of the eligible unit. It was urged that miscellaneous income is eligible for deduction under section 80IC of the Act. The Assessing Officer did not accept the contentions putforth by the assessee, where it claimed the exchange difference of Rs.1,32,64,686/-, which was disallowed, while computing the deduction under section 8OIC of the Act on the ground that foreign exchange did not satisfy the income derived from business condition. The gain did not have immediate and direct nexus with the manufacturing activity as the same had not been found eligible for deduction under section 10A. It has relied on the decision of the Apex Court in the case of ***Liberty India vs. Commissioner of Income-tax***, 317 ITR 218(SC), where it was also not found to be applicable to the case of the assessee on the ground that what was held as the profits of business of the

undertaking would include only those streams of income, which have close and direct nexus with the undertaking.

6 When challenged by the assessee before the CIT(Appeals), it is held that the Foreign Exchange Fluctuation Scheme was earned by the assessee on the import in the course of the business. The purchase price of the product was reduced due to the rate fluctuations, as is settled, the same is to be held as having direct nexus with the business activity of the assessee undertaking and, thus, would be eligible for deduction under section 80IC.

7 The Revenue challenged this before the Tribunal. It has held thus:

> "5. We have heard the rival contentions and perused the material on record. We are in agreement with the submissions of the assessee that foreign exchange gains are inextricably linked to export of goods and hence have a direct and first degree nexus with the manufacturing activity. The assessee is accordingly eligible for deduction u/s. 80IC on such foreign exchange gain. It would also be useful to refer to the following decisions which have held that foreign exchange gains are eligible for deduction u/s. 80IC of the Act. In the case of DCIT v. Ansysco [2017] 88 taxmann.com 768 (Chandigarh - Trib.) (UO), the ITAT held that where foreign exchange fluctuations related to export activity carried out by assessee, income earned

> by assessee on account of foreign exchange fluctuations was to be treated as its trading receipts/receipts from manufacturing activity carried out by it and thereby entitling assessee to claim deduction under section 80-IC on same. Also, in the case of Quadrant EPP Surlon Uttranchal (P.) Ltd. v ITO [2017] 88 taxmann.com 261 (Delhi - Trib.), the Tribunal held that since foreign exchange fluctuation arose on account of trading transactions and excess amount received due to upward revision of foreign exchange rate was part of sale proceeds only, said fluctuation was eligible for section 80-IC deduction. We, therefore, find no infirmity in the order of the ld. CIT(A) whereby the disallowance on foreign exchange gain has been deleted."

8 The issue is covered by the decision of this Court rendered in the case of ***Commissioner of Income-tax vs. ALPS Chemicals (P.) Ltd.***, [2015] 55 **taxmann.com 388 (Gujarat)**, where this Court has held thus:

> Question {B} has two facets – one pertains to income arising out of sale of DEPB license for the purpose of deduction under Section 80IA of the Act, in view of the decision of Supreme Court in case of Liberty India v. Commissioner of IncomeTax, reported in (2009) 317 ITR 218 (SC) holding this issue in favour of the Department and against the assessee. The second aspect of Question is foreign exchange fluctuation for the purpose of deduction under Section 80IA of the Act. This issue would be covered by the judgment of this Court in Tax Appeal No. 1468 of 2006 and connected appeals. It is true that the said decision was rendered in the background of Section 80HHC of the Act. Counsel for the Revenue would contend that Section 80IA of the Act would stand on a different footing since the requirement is that the profit must have been derived from the eligible business. We had, however, examined this issue from all angles and held as under :

"Under the circumstances, we have no hesitation in upholding the view of the Tribunal. Quite apart, the issue is substantially covered by the decision of the Commissioner of Incometax vs. Amba Impex (supra). Consistent and at times independent trend of the judicial pronouncements of Courts across the country need not be disturbed. Even independently, we are of the view that the foreign exchange gain arising out of the fluctuation in the rate of foreign exchange cannot be divested from the export business of the assessee. As noted, once export is made, due to variety of reasons, the remission of the export sale consideration may not be made immediately. Under the accounting principles, therefore, the assessee, on the basis of accrual, would record sale consideration at the prevailing exchange rate on the quoted price for the exported goods in the foreign currency rates. If during the same year of the export, the remission is also made, the difference in the rate recorded in the accounts of the assessee and that eventually received by way of remission either positive or negative, would be duly adjusted. May be the accounting standards require that the same may be recorded in separate foreign exchange fluctuation account. Nevertheless any deviation either positive or negative must have direct relation to the export actually made. Payment would be due to the assessee on account of the factum of export. Current price of the goods so exported would also be pre decided in the foreign exchange currency. The exact remittance in Indian rupees would depend on the precise exchange rate at the time when the amount is remitted. This fluctuation and possibility of increase or decrease, in our opinion, can have no bearing on the source of such receipt. Primarily and essentially, the receipt would be on account of the export made. If this is so, any fluctuation thereof also must be said to have arisen out of the export business. Mere period of time and the vagaries of rate fluctuation in international currencies cannot divest the income from the character of the income from assessee's export business. In that view of the matter, the Revenue's contention that such income cannot be said to have been derived from the export business must fail. If this is the position when the remittance is made during the same year of the export, we fail to see what material change can it bring about if within the time permitted under subsection(2) of section 80HHC, the remittance is made but in the process accounting year has changed. To our mind mere change in the accounting year can have no real

impact on the nature of the receipt. The conclusion of the Assessing Officer that since the year during which such sale proceeds were received by the assessee export was not made, would not in any manner change the situation. The assessee being engaged in the business of export and having made the export, mere fact of the remittance being made after 31st of March of the year when export was made, would not change the situation insofar as, relation of such income to the assessee's export business is concerned. Clause (baa) to the Explanation to section 80HHC provides for exclusion of certain incomes for computation of export profit under section 80HHC.

Subclause (1) of clause (baa) thereof pertains to 90% of the sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature included in such profits. The term "foreign exchange difference" is not specified in any of the categories specifically mentioned in the said clause. The Revenue, however, contended that the same must be included by necessary implication as part of other receipts. Legislature, however, has used the term "any other receipt of similar nature".

This expression "similar nature" would have considerable bearing on the ultimate conclusion that we arrive in this respect. What is to be excluded under the said subclause (1) of clause (baa) is any other receipt of a nature similar to the brokerage, commission, interest, rent or charges. The receipt by way of foreign exchange fluctuation not being similar to any of these receipts mentioned above, application of clause (baa) must be excluded. Subrule (1) of rule 115 only provides for adopting the rate of exchange for calculation of value of rupee of any income accruing or arising in case of an assessee and provides that the same shall be telegraphic transfer of buying rate of such currency on the specified date. The term "specified date" has been defined in Explanation2 to the said subrule (1). Rule 115 of the Incometax Rules, 1962 thus has application for a specific purpose and has no bearing while judging whether foreign exchange rate fluctuation gain can form part of the deduction under section 80HHC of the Act. In case of Commissioner of Incometax & Ors vs. Chowgule and Co. Ltd. reported in [1996] 218 ITR 384, the Court held that rule 115 does not lay down that all foreign currencies received by the

assessee will be converted into Indian rupees only on the last date of the accounting period. Rule only fixed the rate of conversion of foreign currency. If there is no foreign currency to convert on the last date of accounting period, then no question of invoking rule 115 will arise.

In case of Commissioner of Incometax vs. Sterling Foods reported in [1999] 237 ITR 579, the Court held that the facts were that the assessee was engaged in the processing of prawns and sea food and exporting it. In the process the assessee earned import entitlements granted by the Government of India under Export Promotion Scheme. The assessee could use such import entitlements itself or sell the same to others. The assessee sold such entitlements and earned income and included such income for relief under section 80HHC of the Act. The Court held that such income cannot be said to have been derived from assessee's industrial undertaking. In the present case, however, we find that the source of the income of the assessee was the export. On the basis of accrual, income was already reflected in the assessee's account on the date of the export on the prevailing rate of exchange. Further income was earned merely on account of foreign exchange fluctuation. Such income, therefore, was directly related to the assessee's export business and cannot be said to have been removed beyond the first degree.

In case of Commissioner of Incometax vs. Shah Originals reported in [2010] 327 ITR 19 (Bom), the Bombay High Court considered a case where the assessee, an exporter, was given an option to keep a specified percentage of the receipts on account of the export in its Exchange Earners Foreign Currency (EEFC) Account. The assessee realized the full amount on account of the export but kept the portion thereof in EEFC Account. The assessee received higher amount in Indian rupees on such amount so set apart due to the fluctuation in the foreign exchange rate. Conscious of the fact that the assessee had received the entire proceeds of the export transaction and thereafter, gained due to the foreign fluctuation on the account kept by the assessee in the EEFC Account, the Court held that such gain cannot be said to have been derived from the assessee's export business. Thus the significant and distinguishing feature of this case is that the assessee had

received the entire proceeds of the export sale. The foreign exchange fluctuation gain arose subsequent to the assessee receiving the sale consideration. It was in this background, the Court held and observed as under:

" The assessee admittedly in the present case received the entire proceeds of the export transaction. The Reserve Bank of India, has granted of facility to certain categories of exporters to maintain a certain proportion of the export proceeds in an EEFC account. The proceeds of the account are to be utilized for bona fide payments by the account holder subject to the limits and the conditions prescribed. An assessee who is an exporter is not under an obligation of law to maintain the export proceeds in the EEFC account but, this is a facility which is made available by the Reserve Bank. The transaction of export is complete in all respects upon the repatriation of the proceeds. It lies within the discretion of the exporter as to whether the export proceeds should be received in a rupee equivalent in entirety or whether a portion should be maintained in convertible foreign exchange in the EEFC account. The exchange fluctuation that arises, it must be emphasized, is after the export transaction is complete and payment has been received by the exporter. Upon the completion of the export transaction, what the seller does with the proceeds, upon repatriation,is a matter of his option. The exchange fluctuation in the EEFC account arises after the completion of the export activity and does not bear a proximate and direct nexus with the export transaction so as to fall within the expression "derived" by the assessee in sub-section (1) of section 80HHC. Both the Assessing Officer and the Commissioner of Incometax (Appeals) have made a distinction, which merits emphasis. The exchange fluctuation, as both those authorities noted, arose subsequent to the transaction of export. In other words, the exchange fluctuation was not on account of a delayed realization of export proceeds. The deposit of the receipts in the EEFC account and the exchange fluctuation which has arisen therefrom cannot be regarded as being part of the profits derived by the assessee from the export of goods or merchandise."

In the result, Appeal is allowed in part to the extent Tribunal's decision relates to Section 80IA of the Act. With respect to deduction under Section 80IA of the Act on sale

of DEPB licence, the same is reversed. Appeal stands allowed in part."

9 No interference is required, as no substantial question of law arises for consideration of this Court.

10 On the ground of disallowance of Rs.35,59,453/- made on account of disallowance of deduction on export benefit under section 80IC of the Act, the assessee, during the year, received the export benefits, which were in the nature of excise duty refund, as its Baddi Unit was eligible for outright excise duty exemption and the same did constitute independent source of income. The assessee had claimed deduction under section 80IC of the export benefit of Rs.35.59 lakhs (rounded off), representing refund of excise duties paid on material and other items purchased for manufacturing purpose for its Baddi Unit.

11 The Assessing Officer disallowed the claim holding that the excess duty refund did not represent the income with first degree of nexus with the

manufacturing profits. It had disallowed the deduction, while computing the deduction under section 80IC of the Act. The assessee had challenged it before the CIT(Appeals), which deleted the addition on the ground that the payment on Central Excise Duty had direct nexus with the manufacturing activity and the refund of Central Excise could not arise in absence of any industrial activity. Hence, there was a inextricable link between the manufacturing activity, payment of central excise duties and its refund. The words "derived from industrial undertaking" eligible for section 80IB deduction had been discussed at length by placing reliance on various decisions and, accordingly, had deleted the additions made by the Assessing Officer.

12 Aggrieved Revenue had challenged it before the appellate Tribunal, which dismissed it on the ground that the assessee was entitled and eligible for deduction on export benefits on account of the

refund of excise duty under section 80IC of the Act. It had relied on the decision of the Apex Court in the case of ***Commissioner of Income-tax vs. Meghalaya Steels Ltd***, [2016] 67 taxmann.com 158(SC), and other decisions by holding that the CIT(Appeals) did not err in granting 80IC deduction to the assessee in respect of the export benefits representing refund of excise duty paid under section 80IC of the Act.

12.1 According to the Revenue, this treatment on the part of the appellate Tribunal is erroneous, as the Apex Court in the case of ***Meghalaya Steels Ltd*** (supra) had held that all subsidies, which had been reimbursed to the tax payer for element of cost relating to the manufacture or the sale of their products, can be said to be having direct nexus to the profits and the gains of the industrial undertaking. The same was not the case in the case of the assessee. The deduction claimed were in respect of the export benefits representing the refund of excise duty paid under the 80IC Act and

the same, therefore, would not represent the income with the first degree of nexus with the manufacturing profit.

13 We notice that the CIT(Appeals), while considering this issue, has, in detail, examined the judicial precedence, where in one of the judgements of the ***DCIT vs. Coromandel International Ltd.*** (53 taxmann.com 111), it had held that only refund of the amount already paid by the assessee had been reduced from the sale price while computing the profit, therefore, when the assessee gets the refund of an expenditure already incurred, the same shall have to be deemed to be the profit and gain of the business or profession carried on by the assessee and, hence, the excise duty refund received by the assessee shall need to be treated as part of the business profit. It also distinguished the ***Liberty India*** (supra), where the Apex Court was considering the profit derived from the sale of transfer of DEPB/ Duty Drawback Benefits. It was under the scheme

framed under the Customs Act and it is transferable. This being a marketable commodity, profits derived from the sale and transfer of DEPB was not found to be equitable with the excise duty refund, which is neither marketable commodity nor transferable. It is only the refund of expenditure already incurred by the assessee. The CIT(Appeals) held that the issue is squarely covered in favour of the assessee and against the Revenue by the decision of ***Meghalaya Steels Ltd*** (supra).

14 The Court went to an extent of saying that even assuming that the refund does not amount to an income in the hands of the assessee, it is a profit or gain directly derived by the assessee from its industrial activities. ***CIT vs. Dharam Pal Prem Chand***, **[2009] 180 Taxman 557 (Delhi)** is directly on the issue where it is held that the refund of excise duty was pivoted on the activities carried on by the assessee and, thus, it has been held that the payment of Central Excise Duty has a direct nexus

with the manufacturing activity and, likewise, a refund of Central Excise Duty also has a direct nexus with the manufacturing activities. Neither the payment of Central Excise Duty would arise in absence of natural activity nor the refund would be possible without there being any industrial activity and, thus, it has an inextricable link between the manufacturing activity, payment of central excise duty and its refund.

15 In the challenge before the ITAT, it is held that in the case of ***Meghalaya Steels Ltd*** (supra) the Apex Court has given a categorical finding that whenever the assessee received transport subsidy, interest subsidy, power subsidy, insurance subsidy which are reimbursement of manufacturing cost incurred by the assessee, the deduction of the said subsidies are allowed under sections 80IB and 80IC. Therefore, it held that the CIT(Appeals) was not wrong when it granted 80IC deduction to the assessee in respect of its export benefit representing

refund of excise duty paid under section 80IC of the Act. It held, therefore, that the assessee is eligible for deduction on export benefit on account of the refund of excise duty. There does not appear to be any error in understanding the ratio laid down by the Apex Court in the case of ***Meghalaya Steels Ltd*** (supra). There is a reference of ***Dharam Pal Prem Chand*** (supra) by the Apex Court in the decision of ***Meghalaya Steels Ltd*** (supra). The Court held thus:

> "21. The Calcutta High Court in Merino Ply & Chemicals Ltd. v. CIT, 209 ITR 508 [1994], held that transport subsidies were inseparably connected with the business carried on by the assessee. In that case, the Division Bench held:-
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> "We do not find any perversity in the Tribunal's finding that the scheme of transport subsidies is inseparably connected with the business carried on by the assessee. It is a fact that the assessee was a manufacturer of plywood, it is also a fact that the assessee has its unit in a backward area and is entitled to the benefit of the scheme. Further is the fact that transport expenditure is an incidental expenditure of the assessee's business and it is that expenditure which the subsidy recoups and that the purpose of the recoupment is to make up possible profit deficit for operating in a backward area. Therefore, it is beyond all manner of doubt that the subsidies were inseparably connected with the profitable conduct of the business and in arriving at such a decision on the facts the Tribunal committed no error."
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> 22. However, in CIT v. Andaman Timber Industries Ltd., 242 ITR 204 [2000], the same High Court arrived at an opposite conclusion in considering whether a deduction was allowable under Section 80HH of the Act in respect of

transport subsidy without noticing the aforesaid earlier judgment of a Division Bench of that very court. A Division Bench of the Calcutta High Court in C.I.T. v. Cement Manufacturing Company Limited, by a judgment dated 15.1.2015, distinguished the judgment in CIT v. Andaman Timber Industries Ltd. and followed the impugned judgment of the Gauhati High Court in the present case. In a pithy discussion of the law on the subject, the Calcutta High Court held:

"Mr. Bandhyopadhyay, learned Advocate appearing for the appellant, submitted that the impugned judgment is contrary to a judgment of this Court in the case of CIT v. Andaman Timber Industries Ltd. reported in (2000) 242 ITR, 204 wherein this Court held that transport subsidy is not an immediate source and does not have direct nexus with the activity of an industrial undertaking. Therefore, the amount representing such subsidy cannot be treated as profit derived from the industrial undertaking. Mr. Bandhypadhyay submitted that it is not a profit derived from the undertaking. The benefit under section 80IC could not therefore have been granted.

He also relied on a judgment of the Supreme court in the case of Liberty India v. Commissioner of Income Tax, reported in (2009) 317 ITR 218 (SC) wherein it was held that subsidy by way of customs duty draw back could not be treated as a profit derived from the industrial undertaking.

We have not been impressed by the submissions advanced by Mr. Bandhyopadhyay. The judgment of the Apex Court in the case of Liberty India (supra) was in relation to the subsidy arising out of customs draw back and duty Entitlement Pass-book Scheme (DEPB). Both the incentives considered by the Apex Court in the case of Liberty India could be availed after the manufacturing activity was over and exports were made. But, we are concerned in this case with the transport and interest subsidy which has a direct nexus with the manufacturing activity inasmuch as these subsidies go to reduce the cost of production. Therefore, the judgment in the case of Liberty India v. Commissioner of Income Tax has no manner of application. The Supreme Court in the case of Sahney Steel and Press Works Ltd. & Others versus Commissioner of Income Tax, reported in [1997] 228 ITR at page 257 expressed the following views:-

"…. Similarly, subsidy on power was confined to 'power consumed for production'. In other words, if power is consumed for any other purpose like setting up the plant and machinery, the incentives will not be given. Refund of sales tax will also be in respect of taxes levied after commencement of production and up to a period of five years from the date of commencement of production. It is difficult to hold these subsidies as anything but operation subsidies. These subsidies were given to encourage setting up of industries in the State of Andhra Pradesh by making the business of production and sale of goods in the State more profitable."

23. We are of the view that the judgment in Merino Ply & Chemicals Ltd. and the recent judgment of the Calcutta High Court have correctly appreciated the legal position."

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27. A Delhi High Court judgment was also cited before us being CIT v. Dharampal Premchand Ltd., 317 ITR 353 from which an SLP preferred in the Supreme Court was dismissed. This judgment also concerned itself with Section 80-IB of the Act, in which it was held that refund of excise duty should not be excluded in arriving at the profit derived from business for the purpose of claiming deduction under Section 80-IB of the Act.

28. It only remains to consider one further argument by Shri Radhakrishnan. He has argued that as the subsidies that are received by the respondent, would be income from other sources referable to Section 56 of the Income Tax Act, any deduction that is to be made, can only be made from income from other sources and not from profits and gains of business, which is a separate and distinct head as recognised by Section 14 of the Income Tax Act. Shri Radhakrishnan is not correct in his submission that assistance by way of subsidies which are reimbursed on the incurring of costs relatable to a business, are under the head "income from other sources", which is a residuary head of income that can be availed only if income does not fall under any of the other four heads of income. Section 28(iii)(b) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any

> scheme of the Government of India, will be income chargeable to income tax under the head "profits and gains of business or profession". If cash assistance received or receivable against exports schemes are included as being income under the head "profits and gains of business or profession", it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "profits and gains of business or profession", and not under the head "income from other sources".

16 Both the CIT(Appeals) and the Tribunal have rightly followed the decisions of ***Dharam Pal Prem Chand*** (supra) as well as ***Meghalaya Steels Ltd*** (supra) which held that the subsidies, which had been received would be income from other sources.

17 We do not see any reason to interfere as no substantial question of law arises for consideration of this Court.

18 So far as the last question of disallowance made on account of deduction on the scrap value under section 80IC is concerned, the assessee had claimed the deduction of income of Rs.14,26,979/- on scrap generated from the manufacturing process. The Assessing Officer has held that the scrap income does not represent income with first decree of nexus

manufacturing profit and accordingly disallowed the claim relying on ***Liberty India*** (supra).

19 The challenge was made by the assessee through the CIT(Appeals), which deleted the disallowance relying on the Delhi High Court decision in ***CIT vs. Sadhu Forgings Ltd***, **57 DTR 194**, where the Delhi High Court had held that the activity of forging was the treatment of material to produce automobile parts, which amounts to manufacturing and, hence, the labour charges and job work charges earned by the assessee for doing job of forging are gains withheld from the industrial undertakings and are entitled for deduction under section 80IB. The Revenue challenged the same before the appellate Tribunal, which dismissed the appeal on the ground that the assessee is eligible under section 80IC from the sale of scrap.

20 The decision of ***Deputy Commissioner of Income-tax vs. Harjivandas Juthabhai Zaveri and another***, when taken into consideration, it endorses the view of the assessee and has held against the Revenue this-wise.

> "So far as question No.5 is concerned, learned counsel, Mr. Soparkar, drew our attention to section 80-I of the Act and submitted that this section is meant for deduction in respect of profits and gains from industrial undertakings. With regard to the question raised by the Revenue that the amount received on sale of jute bags,

barrels, etc., ought to have been deducted from the cost of the material, Mr. Soparkar, the learned advocate for the assessee, submitted that it would not make any difference if the amount received by the sale of empty barrel or “bardan” (jute bags) is deducted from the cost of the raw material. He submitted that if the cost is reduced by deducting the sum so received, the profit will increase and, ultimately, the total would be the same. He submitted that the Commissioner of income-tax (Appeals) and the Tribunal have rightly come to the come tot he conclusion that the items covered by question No.5 are covered by section 80-I of the Act inasmuch as the amount received can be said to have been received fro the activities undertaken by the assessee. He submitted that no question of law is raised, more particularly, when a Division Bench of this court in Income-tax Application No.70 of 1997 (CIT vs. Norma Detergent P. Ltd.) had considered a similar question and held that “ it was, however, found that the items of kasar and sale of empty soda ash bardans, are directly connected with the nanufacutring activities of the assessee and should be allowed”. It is required to be noted that if the assessee was not engaged in industrial activities, there was no question of empty barrels or bardans. Instead of manufactruing if the assessee was doing tranding activities, i.e., dealin in raw material, and if the assessee had sold the material on retain basis and earned amount by sale of bardans, then obviously this section will not apply.

In view of what we have stated hereinabove, we find that there is no merit in the appeal, and the appeal stands dismissed.”

21 Issue being covered, no substantial question of law arises for consideration of this Court.

22 Appeal stands dismissed accordingly.

(MS. SONIA GOKANI, J.)

(SANDEEP N. BHATT,J)

SUDHIR