

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH: JODHPUR

(BEFORE SHRI HARI OM MARATHA, JUDICIAL MEMBER AND  
SHRI N.K. SAINI, ACCOUNTANT MEMBER)

ITA No. 228/Jodh/2014 [A.Y. 1998-1999]  
ITA No. 229/Jodh/2014 [A.Y.1999-2000]  
ITA No. 230/Jodh/2014 [A.Y. 2000-2001]  
ITA No. 231/Jodh/2014 [A.Y. 2002-2003]  
ITA No. 232/Jodh/2014 [A.Y. 2003-2004]

A.C.I.T. Circle- I Vs Smt. Meena Singh Shekhawat  
Udaipur L/h of Late Sh. Bhopal Singh Shekhawat  
Prop. M/s Shekhawat [India] Exports  
16, New Laxmi Nagar, Sector No. 8  
Hiran Magri, Udaipur.

PAN No. BEHPS 5418 G

(Appellant)

(Respondent)

Assessee by	:	None [W/S]
Department by	:	Shri Mahesh Kumar-D.R.
Date of hearing	:	04/09/2014
Date of pronouncement	:	11/09/2014

**ORDER**

**PER BENCH:**

The above captioned appeals of the Revenue, for the A.Ys 1998-99 to 2003-04, are directed against the common order of Id. CIT(A), Udaipur, dated. 27.01.2014. Almost identical issues arising from common set of facts are involved in these appeals, therefore, for the

sake of congruence, brevity and convenience these are being disposed off by this common order.

2. Briefly stated, the facts of the case are that Late Shri Bhopal Singh Shekhawat, the proprietor of M/s Shekhawat (India) Exports, now deceased, and represented by his widow as legal heir namely Smt. Meena Singh Shekhawat, carried on the business of mining and export of marble blocks. The facts obtaining in A.Y. 1998-99 are that the assessee filed his return of income (in his life time) on 30.10.1998 declaring total income of Rs.1,16,510/- after claiming deduction of Rs. 12,37,964/- u/s 80 HHC of the Income Tax Act, 1961 ( 'the Act' for short), alongwith Tax Audit report in Form No.10CCAC. This Return of Income (ROI) was processed u/s 143(1) of the Act at the returned income. Subsequently, the proceedings u/s 147 r.w.s 148 of the Act after recording the reasons, were initiated by issuing notice u/s 148 of the Act on 20.09.2004. Similar notices were sent for other A.Ys as well. The assessee objected to these notices issued, covering all assessment years, in which the A.O. formed his opinion regarding reasons to believe that income has escaped assessment. According to the assessee notices issued u/s 148 of the Act, except for A.Y.2003-04, being after the lapse of four years prescribed for initiation of this action are illegal

and invalid because the assessee has disclosed fully and truly all material facts necessary for these assessments. The A.O. has ignored this objection, because according to him, this time limit of four years applies in cases where assessments have been completed u/s 143(3) of the Act and not when it is processed u/s 143(1) of the Act. For A.Y. 1998-99 the assessee has disclosed sales of Rs. 34,83,651/- giving a gross profit rate of 41.01% which is found to be lower than shown in the past years. After taking average g.p. rate of two past assessment years the A.O. has applied gross profit rate of 49.32%. (55.02 + 43.62) and has made the trading addition of Rs. 2,89,433/-. The assessee has claimed deduction u/s 80 HHC of Rs. 12,33,964/- against export of cut and polished marble blocks. While considering similar issue in A.Y. 2001-02, the A.O noticed that the assessee exported cut and one side polished marble blocks but as per section 80 HHC read with the Twelfth Schedule of the Act, only cut and polished minerals and rocks are eligible for this deduction. Finally, after considering various contentions of the assessee the A.O. has held that the intention of the legislature is that the rock should be cut and polished to have value addition. The AO has dealt with this issue in detail in A.Y.2001-02 and has held that the assessee is not eligible for deduction u/s 80 HHC of the Act. Accordingly, the AO has made addition of Rs. 12,37,964/- in

this year. Likewise, after disallowing similar claims in other years, the A.O. has disallowed and added them in the respective assessment years. Aggrieved, the assessee went before the ld. CIT(A) for all the years under consideration and he has , allowed a part relief vide order dated 28.08.2000. Aggrieved the assessee filed second appeal before the Appellate Tribunal. The assessee had expired on 08.06.2006, however, it was noticed that the ld. CIT(A) has passed his order on 28.08.2006 [i.e. even after his death] in the assessee's name. Therefore, the Appellate Tribunal has found the order of ld. CIT(A) as non-est in the eyes of the law having been passed against a 'dead-person'. Accordingly, orders passed, in all these years, by ld. CIT(A) were declared void-ab-initio and set-aside to the file of ld. CIT(A), Udaipur, for passing orders after hearing deceased assessee's legal heirs, as per law. Smt. Meena Singh Shekhawat his widow, was admitted and accepted as his legal heir and she was given opportunity of being heard.

2.2 In the second round the legal issue against reopening u/s 147 read with section 148 was decided after hearing the legal heir of the assessee. He has, however, and repeated the order passed, in the first

round, by his predecessor CIT(A), and has dismissed this common legal ground raised in all the appeals.

2.3 The next ground is against trading addition has been allowed and the trading addition of Rs. 2,89,123/- has been deleted .

2.4 The next common ground regarding disallowance of deduction u/s 80 HHC of the Act being of Rs. 2,37,964/- Rs. 1,95,18,358/-, Rs. 68,95,213/-, Rs. 13,70,833/- and Rs. 14,70,699/- in assessment years 1998-99 to 2003-04, respectively, claimed on export of dressed and one side polished dimensional marble blocks has been allowed in all the years, after following the Appellate Tribunal order.

2.5 The next common grounds in A.Y.s 1999-2000 and 2000-01( two A.Ys) was regarding reduction of 90% of export incentive received while calculating deduction u/s 80 HHC of the Act. The ld. CIT(A) has allowed this issue in favour of the assessee in these two A.Ys.

2.6 The next common ground in A.Ys 2002-03 and 2003-04 was relating to disallowance of depreciation on export oriented unit, which have been confirmed.

2.7 The other common ground in all the years was regarding claim of depreciation on vehicles, which has been allowed.

3. Aggrieved, against the relief granted to the assessee the Revenue has come up in appeal.

3.1 All these appeals were heard together. From the side of the respondent (legal heir of the assessee) written submissions have been filed with a request that these appeals may be decided after considering her written submissions. The ld. D.R. has argued his case in detail.

3.2 The Revenue has raised common ground in all these years under consideration regarding allowance of the claim of deduction u/s 80 HHC of the Act allowed by ld. CIT(A). The ld. Sr. D.R. has argued that the assessee is not eligible to claim deduction u/s 80 HHC of the Act against the export of cut and one side polished marble blocks. He took us through the provision of section 80 HHC and also the relevant portion of the Twelfth Schedule of the Act. He has tried to apply them to the facts of these cases. On the other hand through written submissions, heavy reliance has been placed on the decision of the

Hon'ble Jurisdictional High Court rendered in the case of CIT Vs Aravali Mineral & Chemical Industries (P) Ltd, Udaipur & others. A copy of this Judgment dated 20.02.2013 has been produced in support of assessee's claim.

3.3 After going through the above binding judgement, we are of the considered opinion that the ld. CIT(A) has correctly allowed the claim of deduction u/s 80 HHC of the in these cases. The Hon'ble High Court has held thus:

*“23. Therefore, we are of considered opinion that the learned ITAT was justified in allowing the deduction under sec.80HHC of the Act regarding export of cut and polished marble blocks during relevant years by the assessee-respondents. The appeals of the Revenue, therefore, are liable to be dismissed and the substantial question of law framed above is accordingly answered in favour of assessee-respondents and against the appellant-Revenue.*

24. *It is also pertinent to note that since the Circular No.693 dated 17<sup>th</sup> November 1994 has already been referred to and discussed along with the substantial question of law framed in these appeals, for the second substantial question of law framed in Appeal No.29/2008 regarding legal effect of Circular No.693, it is also held that said Circular does not*

*adversely affect claims of the assessee-respondents and the assessees are entitled to benefit of deduction under sec.80HHC of the Act. Thus, the second substantial question of law framed in Appeal No.29/2008 is accordingly answered in DB ITA No.29/2008 & ors CIT Udaipur v. M/s Arihant Tiles & Marbles Pvt Ltd & ors 13/13 favour of the assessee-respondent and against the appellant-Revenue.”*

Accordingly, we cannot allow this common ground raised in Revenue's appeal and by respectfully following the above judgements of the Hon'ble Jurisdiction High Court, we dismiss common grounds and uphold the impugned deletions

3.4 Against the deletion of the trading addition of Rs. 2,89,123/- in A.Y. 1998-99 , the ld. D.R. has argued that the G.P. rate disclosed in this year is on lower side as compared to earlier year. Since the books of accounts of the assessee having been lost and this fact being accepted by the Assessing Officer, the application of average rate of G.P. in the two past years is wholly justified. The ld. CIT(A) has relied on the decision taken in the first ground and the position of facts and contentions of the parties remaining same and similar he has deleted the trading addition.



3.5 Before us also earlier arguments have been reiterated. We have found that the G.P. rate in this year has been on lower side. However, the decrease in G.P. rate stands explained by the undeniable reasons that there is heavy increase in purchase price, freight cost and export cost. The books of accounts were lost and assessee has filed an FIR. The assessee has produced particulars of blocks-purchased and purchase bills were made available vide letter dated 05.12.2005. The Assessing Officer has not invoked section 145(3) in its terms. Therefore, fall in G.P. rate cannot be made a reason for involving section 145(3). Accordingly, we confirm the impugned deletion.

3.6 In A.Y 1998-99 only two grounds-(1) regarding trading addition and (2) regarding allowance of deduction u/s 80HHC have been taken. Since we have confirmed both these deletions, the appeal in ITA 228/Jodh/2014 (A.Y 1998-99) stands dismissed.

3.7 In the result, the appeal of the Revenue stands dismissed.

A.Y. 1999-2000 - ITA No. 229/JU/2014

4. In A.Y 1999-2000, vide ITA No. 229/Jodh/2014, the Revenue has raised the following grounds in its appeal:

*“On the facts and in the circumstances of the case, the Id. CIT(A) has erred in:*

*1. directing to allow deduction u/s 80HHC of the Act on export of marble blocks which were not polished as required by item (x) of the XII Schedule and ignoring the fact that there was no value addition in terms of cost of exported blocks as required by Circular No. 693 dated 17.11.1994.*

*2. allowing the deduction u/s 80HHC on income derived from sale of REP licence.”*

4.1 The ground No.(1) is in relation to allowance of deduction u/s 80HHC which we have allowed in A.Y 1998-99. Facts remaining same, we dismiss ground No.(1) in this year as well.

4.2 The facts apropos ground No.(2) of A.Y 1999-2000 are that the assessee has claimed deduction on sale of REP licence and the Assessing Officer has disallowed the same on the ground that the profit on sale of RE licence was not shown in the computation of income and in Form No. 10CCAC, and also did not furnish details of sale thereof. The case of the assessee is that the Assessing Officer never asked for such details at any point of time.

4.3 After hearing ld. D.R. vis-à-vis the records, we have found that there is no such requirement in the form No. 10CCAC to show the profit on sale of REP licence. The Assessing Officer never required the assessee to produce requisite details at any point of time. Therefore, the impugned deletion is upheld and ground No.(2) of Revenue's appeal is dismissed.

4.4 In the result the appeal of the Revenue in ITA No. 229/Jodh/2014 for A.Y 1999-2000 stand dismissed.

A.Y. 2000-01 - ITA No. 230/JU/2014

5. In A.Y 2000-01, vide ITA No. 230/Jodh/2014, the Revenue has raised the following grounds in its appeal:

*“On the facts and in the circumstances of the case, the ld. CIT(A) has erred in*

*1. directing to allow deduction u/s 80HHC of the Act on export of marble blocks which were not polished as required by item (x) of the XII Schedule and ignoring the fact that there was no value addition in terms of cost of exported blocks as required by Circular No. 693 dated 17.11.1994.*

2. *allowing the deduction u/s 80HHC on income derived from sale of REP licence.”*

5.1 As is evident both the above grounds are same and similar to grounds raised in A.Y 1999-2000 and are grounded on same facts, Therefore, with similar reasoning we dismiss both the above grounds. Therefore, appeal of the Revenue for A.Y 2000-01 is dismissed.

5.2 In the result, the appeal for A.Y 2000-01 in ITA 230/Jodh/2014 also stands dismissed.

#### **A.Y 2002-03 ITA No.231/Jodh/2014**

6. In this appeal the Revenue has raised the following grounds:

*“On the facts and in the circumstances of the case, the Id. CIT(A) has erred in*

1. *directing to allow deduction u/s 80HHC of the Act on export of marble blocks which were not polished as required by item (x) of the XII Schedule and ignoring the fact that there was*

*no value addition in terms of cost of exported blocks as required by Circular No. 693 dated 17.11.1994.*

*2. Deleting the disallowance of depreciation of Rs. 36,582/- made on account of personal use of vehicles.”*

6.1 Ground No.(1) is dismissed with the similar reasoning as the assessee has been held to be eligible for deduction u/s 80HHC of the Act.

6.2 Facts apropos ground No.(2) of this year are that the assessee has claimed depreciation on vehicles and the A.O has disallowed 1/6<sup>th</sup> out of depreciation claimed (at Rs. 2,19,493/- in this year) at Rs.36,582/-. This disallowance has been deleted by the ld. CIT(A). The ld. D.R. reiterated his earlier argument. The assessee is entitled for 100% depreciation as per law if the vehicles are used for business. The adhoc disallowance without any specific facts is not justified. Therefore, we confirm impugned deletion and dismiss ground No.(2) of Revenue's appeal.

6.3 In the result the appeal for A.Y 2002-03 in ITA 231/Jodh/2014 also stands dismissed.

A.Y 2003-04 in ITA No.232/Jodh/2014

7. In this appeal of the Revenue for A.Y 2003-4, following grounds have been raised:

*“On the facts and in the circumstances of the case, the Id. CIT(A) has erred in*

*1. directing to allow deduction u/s 80HHC of the Act on export of marble blocks which were not polished as required by item (x) of the XII Schedule and ignoring the fact that there was no value addition in terms of cost of exported blocks as required by Circular No. 693 dated 17.11.1994.*

*2. Deleting the disallowance of depreciation of Rs. 45,701/- made on account of personal use of vehicles.”*

7.1 Both the grounds are similar to the grounds raised in A.Y 2002-03. We have dismissed both grounds in that appeal. Therefore, with similar reasoning we dismiss both the grounds of this appeal and dismiss this appeal.

7.2 In the result the appeal for A.Y 2003-04 in ITA 232/Jodh/2014 also stands dismissed.

8. To sum up, in the result, all the appeals of the Revenue in ITA Nos. 228 to 232 stand dismissed.

(Order pronounced in the open court on September, 2014)

Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER

Sd/-  
(HARI OM MARATHA)  
JUDICIAL MEMBER

Dated : 11<sup>th</sup> September, 2014

VL/

Copy forwarded to :-

1. M/s Meena Singh Shekhawat, Udaipur
2. A.C.I.T. Circle-I, Udaipur.
3. CIT, Udaipur.
4. CIT (A), Udaipur.
5. CIT,DR, ITAT, Jodhpur.

By Order,

AR, ITAT, Jodhpur.