

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5592 OF 2008

Commnr. of Income Tax-VII, New Delhi **Appellant**

Versus

Punjab Stainless Steel Industries **Respondent**

WITH

Civil Appeal Nos. 3283 and 4491 of 2009 and 4898 of 2010

JUDGMENT

ANIL R. DAVE, J.

1. Being aggrieved by the judgment delivered in ITA No. 520 of 2006 dated 19th January, 2007, by the High Court of Delhi, this Appeal has been filed by the Commissioner of Income Tax.

2. The facts giving rise to the present appeal, in a nutshell, are as under:

So as to encourage export for the purpose of earning foreign exchange, Section 80 HHC has been enacted in the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). By virtue of the provisions of the said section, subject to certain conditions, the exporter gets certain deduction from the income, which is derived from the profits from export of goods, while computing taxable income.

3. For the purpose of calculating the deduction, according to the provisions of Section 80HHC of the Act, one has to take into account the profits from the business of the assessee, export turnover and total turnover. The deduction, subject to several other conditions, incorporated in the Section, is determined as under:

$$\frac{\text{Profits of the Business}}{\text{Total Turnover}} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

4. Thus, to determine the amount of deduction, the assessee and the Revenue must be aware of the following three ingredients:

- (i) Profits of the business
- (ii) Export turnover
- (iii) Total turnover

5. In the instant case, the issue is with regard to the term “Total turnover”.

6. The assessee is a manufacturer and exporter of stainless steel utensils. In the process of manufacturing stainless steel utensils, some portion of the steel, which can not be used or reused for manufacturing utensils, remains unused, which is treated as scrap and the respondent-assessee disposes of the said scrap in the local market and the income arising from the said sale is also reflected in the profit and loss account. The respondent-assessee not only sells utensils in the local market but also exports the utensils.

7. For the purpose of availing deduction under Section 80HHC of the Act for the relevant Assessment Year, the assessee was not including the sale proceeds of scrap in the total turnover but was showing the same separately in the Profit and Loss Account.
8. According to the Revenue, the sale proceeds from the scrap should have been included in the 'total turnover' as the respondent-assessee was also selling scrap and that was also part of the sale proceeds.
9. The assessee had objected to the aforestated suggestion of the Revenue because inclusion of the sale proceeds of scrap into the total turnover would reduce the amount deductible under the provisions of Section 80HHC of the Act.
10. One can very well see that if the total turnover increases, the advantage which the assessee would get under Section 80HHC would decrease because the amount deductible substantially depends upon the ratio between the export turnover and total turnover. If the export turnover is higher,

comparatively the amount deductible under Section 80HHC would be more; or in other words, if compared to total turnover, export turnover is less, the amount deductible from the income under Section 80HHC would be reduced. By virtue of the impugned judgment delivered by the High Court, the accounting method followed by the respondent-assessee has been approved and therefore, this appeal is filed by the Revenue.

11. The learned counsel appearing for the appellant-Revenue, had vehemently submitted that even the sale of scrap is sale and the proceeds which the respondent-assessee received from such sale should be included in the 'total turnover'. In the circumstances, the total turnover must include the amount received by the respondent-assessee from the sale of scrap.
12. It had been submitted by him that the respondent-assessee was getting substantial amount from sale of scrap and the receipt from the sale of scrap was a regular feature of its

business. In the aforesaid circumstances, according to the learned counsel appearing for the appellant-Revenue, the view expressed by the High Court is incorrect because that would exclude substantial receipt of the respondent-assessee from the total turnover and therefore, according to him, the appeal should be allowed and the amount deductible should be re-assessed after inclusion of the amount received from the sale of scrap into the 'total turnover'.

13. On the other hand, the learned counsel appearing for the respondent-assessee had submitted that the proceeds of sale of scrap can never be included in the 'total turnover' because the respondent-assessee is not dealing in scrap. According to him, scrap is generated in the process of manufacturing and the scrap is nothing but the raw material which could not be used in the process of manufacturing and therefore, sale proceeds of such scrap would merely bring down the cost of raw material. Thus, the sale

proceeds of the scrap can either be deducted from the cost of raw material or can be shown in the profit and loss account but the said amount can never be treated as a part of 'sales' or 'turnover'.

14. The learned counsel had also relied upon the judgment delivered in the case of COMMISSIONER, INCOME TAX THIRUVANANTHAPURAM v. K RAVINDRANATHAN NAIR [(2007) 15 SCC 1], which deals with the term 'turnover'. According to him, though the said issue has not been directly discussed in the said judgment, from the meaning of the word 'turnover' given in the said judgment, it is very clear that the term 'turnover' would include only the sale proceeds of the articles manufactured and sold and not other things which are sold by a business unit. He had also referred to the definition of term 'business' given in the Act.
15. According to him, had the respondent-assessee been doing business of scrap, the sale proceeds of scrap would have

been treated as a part of 'total turnover' but as the respondent is not dealing in scrap, the amount received from the sale of scrap can never be treated as a part of the sale proceeds and therefore, he had submitted that the view taken by the High Court is absolutely correct.

16. We had heard the learned counsel appearing for both the sides and also considered the relevant record and the judgments referred to.
17. To ascertain whether the turnover would also include sale proceeds from scrap, one has to know the meaning of the term 'turnover'. The term 'turnover' has neither been defined in the Act nor has been explained by any of the CBDT circulars.
18. In the aforestated circumstances, one has to look at the meaning of the term 'turnover' in ordinary accounting or commercial parlance.
19. Normally, the term 'turnover' would show the sale effected by a business unit. It may happen that in the course of the

business, in addition to the normal sales, the business unit may also sell some other things. For example, an assessee who is manufacturing and selling stainless steel utensils, in addition to steel utensils, the assessee might also sell some other things like an old air conditioner or old furniture or something which has outlived its utility. When such things are disposed of, the question would be whether the sale proceeds of such things would be included in the 'turnover'. Similarly in the process of manufacturing utensils, there would be some scrap of stainless steel material, which cannot be used for manufacturing utensils. Such small pieces of stainless steel would be sold as scrap. Here also, the question is whether sale proceeds of such scrap can be included in the term 'sales' when it is to be reflected in the Profit and Loss Account.

20. In ordinary accounting parlance, as approved by all accountants and auditors, the term 'sales', when reflected in the Profit and Loss Account, would indicate sale proceeds

from sale of the articles or things in which the business unit is dealing. When some other things like old furniture or a capital asset, in which the business unit is not dealing are sold, the sale proceeds therefrom would not be included in 'sales' but it would be shown separately.

21. In simple words, the word "turnover" would mean only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in. For example- If a manufacturer and seller of air-conditioners is asked to declare his 'turnover', the answer given by him would show the sale proceeds of air-conditioners during a particular accounting year. He would not include the amount received, if any, from the sale of scrap of metal pieces or sale proceeds of old or useless things sold during that accounting year. This clearly denotes that ordinarily a businessman by word "turnover" would mean the sale proceeds of the goods (the things in which he is dealing) sold by him.

22. So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material, which is steel in the case of the respondent-assessee, as the respondent-assessee is using stainless steel as raw material, from which utensils are manufactured. The raw material, which is not capable of being used for manufacturing utensils will have to be either sold as scrap or might have to be re-cycled in the form of sheets of stainless steel, if the manufacturing unit is also having its re-rolling plant. If it is not having such a plant, the manufacturer would dispose of the scrap of steel to someone who would re-cycle the said scrap into steel so that the said steel can be re-used.
23. When such scrap is sold, in our opinion, the sale proceeds of the scrap cannot be included in the term 'turnover' for the reason that the respondent-unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap

of steel. Therefore, the proceeds of such scrap would not be included in 'sales' in the Profit and Loss Account of the respondent-assessee..

24. The situation would be different in the case of the buyer, who purchases scrap from the respondent-assessee and sells it to someone else. The sale proceeds for such a buyer would be treated as "turnover" for a simple reason that the buyer of the scrap is a person who is primarily dealing in scrap. In the case on hand, as the respondent-assessee is not primarily dealing in scrap but is a manufacturer of stainless steel utensils, only sale proceeds from sale of utensils would be treated as his "turnover".

25. So as to be more accurate about the word "turnover", one can either refer to dictionaries or to materials which are published by bodies of Accountants. The Institute of Chartered Accountants of India (hereinafter referred to as the 'ICAI') has published some material under the head "Guidance Note on Tax Audit Under Section 44AB of the

Income Tax Act”. The said material has been published so as to guide the members of the ICAI. In our opinion, when a recognized body of Accountants, after due deliberation and consideration publishes certain material for its members, one can rely upon the same. Para 5 of the said Note deals with “Sales”, “turnover” and “gross receipts”. Paras 5.2 and 5.3 of the said Note are reproduced hereinbelow, which pertain to the term “turnover”.

“5.2 In the “Guidance Note on Terms Used in Financial Statements” published by the ICAI, the expression “Sales Turnover” (Item 15.01) has been defined as under:-

“The aggregate amount for which sales are effected or services rendered by an enterprise. The term ‘gross turnover’ and ‘net turnover’ (or ‘gross sales’ and ‘net sales’) are sometimes used to distinguish the sales aggregate before and after deduction of returns and trade discounts”.

5.3 The Guide to Company Audit issued by the ICAI in the year 1980, while discussing “sales”, stated as follows:

“Total turnover, that is, the aggregate amount for which sales are effected by the company, giving the amount of sales in

respect of each class of goods dealt with by the company and indicating the quantities of such sales for each class separately.

Note (i) The term 'turnover' would mean the total sales after deducting therefrom goods returned, price adjustments, trade discount and cancellation of bills for the period of audit, if any. Adjustments which do not relate to turnover should not be made e.g. writing off bad debts, royalty etc. Where excise duty is included in turnover, the corresponding amount should be distinctly shown as a debit item in the profit and loss account.”

(emphasis added)

The aforestated meaning given by the ICAI clearly denotes that in normal accounting parlance the word “turnover” would mean “total sales” as explained hereinabove. The said sales would definitely not include the scrap material which is either to be deducted from the cost of raw material or is to be shown separately under a different head. We do not see any reason for not accepting the meaning of the term “turnover” given by a body of Accountants, which is having a statutory recognition.

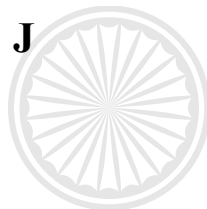
26. If all accountants, auditors, businessmen, manufacturers etc. are normally interpreting the term ‘turnover’ as sale proceeds of the commodity in which the business unit is dealing, we see no reason to take a different view than the view normally taken by the persons who are concerned with the said term.
27. In addition to the above factors, which we have considered for understanding the meaning of the term “turnover”, we should not miss the purpose with which the said term has been incorporated in Section 80 HHC of the Act.
28. The intention behind enactment of Section 80HHC of the Act was to encourage export so as to earn more foreign exchange. For the said purpose the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, we are of the view that the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the

process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, we are sure that the Government would like to encourage such a person. In our opinion, once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law.

29. For the aforesaid reasons, we are of the view that the view expressed by the High Court is in conformity with the normal accounting practice followed by the traders, including the respondent-assessee and it was justified in coming to a conclusion that the proceeds generated from the sale of scrap would not be included in the 'total turnover'.
30. For the aforesaid reasons, we dismiss the appeal with no order as to costs.

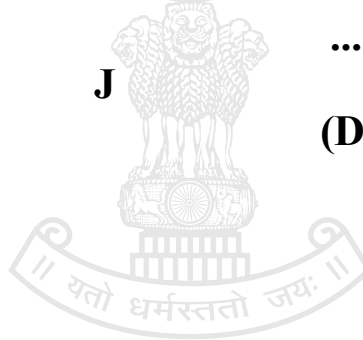
31. In view of the order passed in the Civil Appeal No. 5592 of 2008, Civil Appeal Nos. 3283 of 2009, 4491 of 2009 and 4898 of 2010 are also dismissed with no order as to costs as the legal issues involved in these appeals are same.

J



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(ANIL R. DAVE)

J



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(DIPAK MISRA)

**New Delhi
May 5, 2014.**

JUDGMENT