IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.A. No.118 of 2007
Date of Decision:16.04.2007

M/s Sarla Handicrafts Private Limited, Aggarwal Bhawan, Ambala City

.....Appellant

Vs.

Addl. Commissioner of Income-tax, Spl. Range, Panchkula

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. M.L.Garg, Advocate for the appellant.

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RAJESH BINDAL, J.

The assessee has approached this Court, by filing the present appeal, raising the following substantial questions of law, arising out of order dated 31.8.2006 passed by the Income Tax Appellate Tribunal, Chandigarh Bench `A', Chandigarh in I.T.A. No.757/Chandi/2002, for the assessment year 1998-99:-

> "i) Whether, in the facts and circumstances of the case, learned Tribunal was right in law in holding that the appellant is not entitled to deduction under section 80 HHC as an exporter on surrendered income of Rs.13.00 lacs when it is not disputed that the appellant is not selling any goods within the country and is 100% Export Oriented Unit?
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> ii) Whether the learned Tribunal was right in law in holding that the deduction under section 80HHC is not admissible on the amount of Rs.13.00 lacs as the same has been shown as miscellaneous income, whereas it is settled law that real character of transaction is to be seen and the nomenclature given is not relevant?"

Briefly, the facts are that the assessee which is a private limited company, filed its return of income on November 30, 1998 declaring the

same at Rs.20,51,900/-. The same was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short, `the Act') on July 30, 1999. Thereafter, the case was picked up for scrutiny and remained under consideration. During the financial year in question, survey under Section 133A of the Act, was conducted at the business premises of the assessee on March 6, 1998 which continued upto March 9, 1998. During the course of survey, stock to the tune of Rs. 12,77,906/- was found to be short. In addition to this, the amounts declared to have been spent by the assessee, on the construction of a factory shed at Panipat, was also found to be short. Accordingly, the assessee surrendered additional income of Rs.13 lacs on account of discrepancy in the stock found at the time of survey and another sum of Rs. 6 lacs on account of investment in the construction of building at Panipat. As the assessee is engaged in the business of export of goods, while claiming deduction under Section 80HHC of the Act, the additional income of Rs.19 lacs, surrendered at the time of survey, was added in the business income and benefit was sought to be claimed therein. The claim made by the assessee, on that account, was rejected by the Assessing Officer vide order dated December 28, 2000. In appeal against the order of assessment, the assessee succeeded before the Commissioner of Income Tax (Appeals) (for short, `the CIT(A)').

In further appeal before the Tribunal, the order passed by the CIT(A) was reversed and it was held that the assessee is not entitled to add income of Rs.13 lacs surrendered, on account of shortage of stocks at the time of survey, to be included for the purpose of calculation of deduction under Section 80HHC of the Act. The plea raised by the assessee to the effect that as the assessee is a 100% export oriented unit and is not having any other source of income, the income surrendered by the assessee on account of shortage of stocks has necessarily to be counted towards income from export earnings and consequently the assessee was entitled to the benefit thereon, was considered and rejected. Even before this Court, the assessee has raised the same plea. According to him, as the only source of income with the assessee was export, the stock found short at the time of survey has necessarily to be considered as exported and the income derived therefrom as income from export earnings. Similar arguments raised by the assessee in I.T.A. No.302 of 2005 – **M/s National Legguard Works, Basti**

Shiekh Road, Jalandhar v. Commissioner of Income Tax (Appeals), Jalandhar and another was rejected by this Court vide order dated 22.9.2006. It was held therein that the deduction under Section 80HHC of the Act is available only on fulfilment of certain conditions specified therein and there can be no presumption that surrender made on account of difference found in the stock at the time of survey represents income from exports. Once that is not so, the assessee cannot be held entitled to add the surrendered income in the income from business for the purpose of calculation of deduction under Section 80HHC of the Act.

Accordingly, we do not find any merit in the present appeal and dismiss the same.

(RAJESH BINDAL)
JUDGE

April 16 , 2007 **(M.M.KUMAR)**
renu **JUDGE**