

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3142 OF 2009
(Arising out of SLP(C) No.22604 of 2007)

CHHOTALAL SAMJI

...APPELLANT (S)

VERSUS

INCOME TAX OFFICER

...RESPONDENT(S)

ORDER

Leave granted.

This civil appeal pertains to assessment year 2001-02.

By the Finance Act, 1990, Section 28 of the Income-tax Act, 1961 has been amended by inserting therein, clauses (iiia), (iiib) and (iiic) with retrospective effect with a view to ensure that cash compensatory support (CCS), duty drawback (DD) and profit on sale of import entitlement licences (IL) shall be taxable under the head “Profits and Gains of Business or Profession”. In view of this amendment, the above three export incentives have got to be included in the profits of the business for computing the deduction under Section 80HHC.

In this case we are only concerned with two out of three above-mentioned export incentives, namely, duty drawback and profits arising from sale of DEPB licence. We quote hereinbelow Section 28(iiia) and (iiic) of the 1961 Act which read as under:

“Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head “Profits and gains of business or profession”-

(iiia) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control)

Act, 1947 (18 of 1947);

...

(iiic) any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971.”

According to the A.O., under Section 28(iia) of the said Act, profits on sale of a licence granted under Imports (Control) Order, 1955, made under the Import and Exports (Control) Act, 1947 and duty drawback repayable against exports under the Customs and Central Excise Duties Drawback Rules, 1971, are alone includible in the profits of a business for computing the deduction under Section 80HHC. However, according to the A.O., in the present case, the assessee claims to have earned profits on the sale of DEPB licence under Foreign Trade (Development and Regulation) Act, 1992 and not under Imports (Control) Order, 1955, made under the Import and Exports (Control) Act, 1947 and, therefore, such profits were not includible in business profits for computing the deduction under Section 80HHC of the said Act. Similarly, according to the A.O., in this case, the assessee has earned duty drawback under Customs and Central Excise Duties Drawback Rules, 1995. It has not earned duty drawback under Customs and Central Excise Duty Drawback Rules, 1971 and, therefore, the assessee was not entitled to include such incentives in the business profits for computing the deduction under Section 80HHC. One more finding has been given by the A.O., namely, that the assessee was not entitled to claim the benefit under Section 80HHC because the assessee during the assessment year in question has derived negative profits (loss) from export of trading goods.

None of the above questions have been decided by the High Court. In the circumstances, we set aside the impugned order and restore Tax Appeal No.1127 of 2006 for *de novo* consideration by the High Court in accordance with law.

Accordingly, the civil appeal stands allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
April 30, 2009

.....J
[AFTAB ALAM]



ITEM NO.3

COURT NO.4

SECTION IIIA

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

Petition(s) for Special Leave to Appeal (Civil) No(s).22604/2007

**(From the judgment and order dated 21/03/2007 in TA No. 1127/2006
of The HIGH COURT OF GUJARAT AT AHMEDABAD)**

CHHOTALAL SAMJI**Petitioner(s)****VERSUS****INCOME TAX OFFICER****Respondent(s)**

(With appln(s) for permission to place addl. documents on record and prayer for interim relief)

Date: 30/04/2009 This Petition was called on for hearing today.

CORAM :**HON'BLE MR. JUSTICE S.H. KAPADIA****HON'BLE MR. JUSTICE AFTAB ALAM**

For Petitioner(s) Mr. Ramesh P. Bhatt, Sr.Adv.

Mr. Dattatray Vyas, Adv.**Mr. Manish Sharma, Adv.****Mr. Chirag M.Shroff,Adv.**

For Respondent(s) Mr. Radha Krishnan, Sr.Adv.

Mr. Navin Prakash, Adv.**Mr. Kul Bharat, Adv.****Mr. B.V. Balaram Das,Adv.**

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

Leave granted.**The appeal is allowed with no order as to costs.**

(S. Thapar)
PS to Registrar

(Madhu Saxena)
Court Master

The signed order is placed on the file.

