

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 259 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

Sd/-

HONOURABLE MS.JUSTICE HARSHA DEVANI

Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DUTRON PLASTICS PVT. LTD. - Appellant(s)**Versus****DY. C.I.T. (ASSESSMENT) - Opponent(s)**

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Appearance :

MR RK PATEL for Appellant(s) : 1,

MRS MAUNA M BHATT for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**and****HONOURABLE MS.JUSTICE HARSHA DEVANI****Date : 31/07/2012****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The assessee has challenged judgment of Income Tax Appellate Tribunal ('The Tribunal' for short) dated

21.07.2000. At the time of admission of the appeal following substantial question of law was framed:

"Whether on the facts and in the circumstances of the case the Tribunal is correct in its interpretation of provision of section 80HHC, with special reference to the interpretation of the phrase "total turnover" as existing in the said statutory provisions?"

2. Upon perusal of the documents on record and hearing the learned counsel appearing for the parties, we find that the question framed has two elements. The first is whether while computing the deduction under Section 80HHC of the Income Tax Act, 1961 (for short 'The Act') sales tax collected by the assessee and paid to the Government should form part of the total turnover. The second question is whether the turnover discount offered by the assessee to its dealers should form part of the total turnover for the purpose of computing deduction under Section 80HHC of the Act.

3. We may notice facts in brief:

3.1 The appellant-assessee is a company engaged in the business of production and sale of Plastic Hose Pipes used in agriculture operations. During the year relevant to assessment year 1992-93, the assessee made net sales of Rs. 11,62,61,934/-. The assessee also had made certain exports during the said period. In terms of the provisions contained in Section 80HHC as it stood at the relevant time, the assessee was entitled to deduction on such exports sales in terms of the formula provided in said section. It is well known that Section 80HHC of the

Act provided for deduction in respect of profits retained for export business. Under sub-section (1) of Section 80HHC of the Act, as it stood at the relevant time an assessee who was engaged in the business of export of goods or merchandise to which a section applied was entitled to deduction in computing of total income of the assessee of the profit derived from the export of such goods or merchandise. In case of a manufacturer exporter to which category, the assessee belonged, such deduction was to be worked out as per the formula provided in sub-section (3) of Section 80HHC. As per such formula, export profit would be the amount which bears to the profit of the business the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. In other words, $\text{Export Profit} = \text{Total Profit} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$.

4. In this context computation of total turnover of the assessee assumes significance. The case of the assessee is that while computing such total turnover, the sales tax collected by the assessee from its consumer and paid over to the Government should be excluded. It is also the case of the assessee that the trade discounts which the assessee offered to its dealers can also not form part of the total turnover.
5. We will deal with both these aspects separately. Insofar as the inclusion of sales tax in the total turnover is concerned, our task has been made easy by virtue of decision of the Apex Court in case **Commissioner of**

Income Tax Vs. Lakshmi Machine Works reported in 290 ITR 667 in which the Apex Court held that the excise duty and sales tax cannot form part of “turnover” under Section 80 HHC(3) of the Act. It was further held that sale tax and excise duty do not have any element of turnover. The Apex Court observed that excise duty and sales tax are indirect taxes. They are recovered by the assessee on behalf of the Government. Therefore, if they are made relatable to exports, the formula under Section 80HHC of the Act would become unworkable.

6. The contested question before us is with respect to inclusion of the turnover discount offered by the assessee. During the year under consideration, the assessee had offered turnover discount of total of Rs. 49,47,812/- to its dealers. Before the Assessing Officer, the assessee contended that in the formula contained under Section 80 HHC(3) of the Act, such amount cannot form part of the total turnover. The Assessing Officer, however, did not accept the contention. The matter went-up to the Tribunal. The Tribunal dealt with the issue in the following manner:

“ The assessee's claim of turnover discount comes to Rs. 49,47,812/-. This is the amount of discount allowed to the declare on their turnover which they have done with the assessee during the year. Hence, it is termed as “turnover discount”. According to the assessee, it is not discount from the assessee's turnover. We are unable to agree with this submission given by the assessee. As rightly observed by the learned CIT(A), sales takes place at the first instance and discount is given at the later stage. Therefore, the terms “total turnover” has to be understood with respect to the amount shown on the sale

bills and the subsequent discount allowed to the declare can only be treated as an item to be debited to the P & L A/c. In this context we have to point out with respect that the case law relied on by the learned counsel in the case of Madras Rubber Industries (P) Ltd. supra is not persons to the issue before us at that was a case decided by the Hon'ble Supreme Court with reference to valuation under the Central Excise and Salt Act, 1944. In the context of I.T.Act, that case law is distinguishable with respect to the term "total turnover" as appearing in Sec. 80HHC."

7. Learned counsel Mr. Karia for the appellant submitted that the Tribunal committed serious error in not taking into consideration the nature of discount offered. He submitted that under scheme framed by the assessee, the dealers who exceeded certain level of performance were granted weighted discounts. Such amount, which the assessee never received from the dealers, cannot form part of the turnover. He submitted that the turnover did not define under the Act, must be understood as in the common parlance in the trade.
8. Counsel further submitted that looking to the nature of the trade discount, the nature of such discount was such that the total sale receipts of the assessee would get reduced by such an extent that is how the assessee had accounted for such discount in the books. The assessee's total receipts, therefore, were minus the discount offered. Their total turnover, therefore, would not exclude the trade discount.
9. In support of his contentions, counsel relied on the following decisions:

1. In case of Commissioner of ***Income Tax Vs. Pesticides India Ltd. reported in 283 ITR 304*** wherein the Division Bench of Rajasthan High Court examined the similar question. In the said decision, the Court, referring to the provisions contained in Section 80HHC of the Act, held that the trade discount cannot form part of the total turnover.
2. Counsel also relied on the decision in case of ***M/s. IFB Industries Ltd. Vs. State of Kerala reported in AIR 2012 SC 1468*** wherein the Apex Court in context of the provisions of Kerala General Sales Tax Act (1963) discussed the concept of turnover and also of trade discounts.
3. Counsel also relied on decision in case of ***Government of India Vs. Madras Rubber Factory Ltd. reported in 77 ELT 433*** wherein in the context of Central Excise and Salt Act, 1944, the Apex Court held that the value of goods does not include trade discount allowed in accordance with normal practice of the wholesale trade at the time of removal of such goods.
10. On the other hand, learned counsel Mr. Bhatt for the revenue opposed the appeal contending that the assessee would first receive the payment from the dealer and thereafter pass on discount. The turnover should, therefore, have a relevance to a total payment received by the assessee. He drew our attention to the Schedule VI of the Companies Act wherein Part II provides for requirements as to profit and loss account. Para 3 of the

said part pertains to the profit and loss account provide that shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the information specified therein including the turnover, that is, aggregate amount for which sales are effected by the company.

11. Having heard the learned counsel for the parties and having perused the material on record, we may first notice the discount scheme framed by the assessee. By Circular dated 01.04.1991, the assessee addressed the tender letter to all its dealers and conveyed that there will be modification of the previous turnover discount (TOD for short). Henceforth, the discount would be allowed in following manner:

Net value Excluding Taxes TOD%

Dutron Kanafles Suction & Delivery House: Size 50 mm to 200 mm (Excluding Duct Hose)	: Below Rs. 2.0 lacs	NIL
	: Rs. 2.0 lacs & above	2%
	: Rs. 3.0 lacs & above	3%
	: Rs. 4.0 lacs & above	4%
	: Rs. 5.0 lacs & above	5%

As regards DUCT Hoses TOD will be allowed as below for the current year.

DUCT HOSE	: Below Rs. 2.0 lacs	NIL
size 20 MM to 200MM	: Rs. 2.0 lacs & above	3%
	: Rs. 3.0 lacs & above	4%
	: Rs. 4.0 lacs & above	5%

12.The scheme further provided that such discount will be allowed only on such bills which were paid strictly within 30 days from the date of the bill and further that outstanding bills including supplies made during March if not cleared within 31st March will not be considered for TOD.

13.In terms of such scheme therefore, the dealers of the assessee would receive a certain incentive calculated on the basis of the total turnover achieved by them. Such incentive was in the form of discount. Such discount would be directly proportionate to the sales affected by the concerned dealer. One of the conditions ofcourse was that on any bill outstanding beyond period of 30 days, no discount would be paid. Thus, the scheme framed by the assessee related the discount to two factors viz. the sales effected by the dealer and to the prompt payments of periodical bills.

14.Keeping the above background in mind, we may try to ascertain whether such discount should form part of the total turnover. The term turnover has not been defined under the Income Tax Act or for that matter under Section 80HHC of the Act. The Central Sales Tax Act, 1956 defines term “turnover” in Section 2 (j) of the Act as under:

Section 2(h) in turn defines term “sales price” as under:

(h) “sale price” mean the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum

charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged:

(j) “turnover used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period [and determined in accordance with the provisions of this Act and the rules made thereunder]”

[Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purpose of this clause;]

15.From above definitions it can be seen that turnover for the purpose of the said Act is an aggregate of the sale prices received and receivable by dealer in respect of sales of goods in course of inter-State trade or commerce made during the prescribed period. In turn, the term “sale price” in Section 2(h) of the said Act means the amount payable to a dealer as consideration for sale of any goods as reduced by any sum allowed as cash discount according to the prevailing practice in the trade, but inclusive of certain specified items.

16.Before the Apex Court in case of **The Deputy**

Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. M/s. Advani Coorlikon (P.) Ltd.

reported in **AIR 1980 SC 609** these definitions came up for interpretation. The question was whether a trade discount as opposed to a cash discount could form part of the turnover. The Apex Court noted that under clause 2(h) it was only the cash discount which would be excluded from the sale price. The Apex Court also noted that there was clear distinction between the trade discount and cash discount. Despite this, it was held that:

"It is true that no deduction on account of cash discount is alone specifically contemplated from the sale consideration in the definition of sale price by Section 2(h), and there is no doubt that cash discount cannot be confused with trade discount. The two concepts are wholly distinct and separate. Cash discount is allowed when the purchaser makes payment promptly or within the period of credit allowed. It is a discount granted in consideration of expeditious payment. A trade discount is a deduction from the catalogue price of goods allowed by wholesalers to retailers engaged in the trade. The allowance enables the retailer to sell the goods at the catalogue price and yet make a reasonable margin of profit after taking into account his business expense. The outward invoice sent by a wholesale dealer to a retailer shows the catalogue price and against that a deduction of the trade discount is shown. The net amount is the sale price, and it is that net amount which is entered in the books of the respective parties as the amount realisable. Orient Paper Mills Ltd. Vs. State of Orissa, (1975) 35 STC 84 (Orissa)."

17. It can thus be seen that as per the said decision, even in absence of any specific exclusion of trade discount from the sale price, it was held that the same cannot form part of the total turnover since the net amount that the dealer receives is the sale price and it is that net amount which

is entered as amount realizable. It would thus appear that such amount which the dealer would never receive could not form part of the turnover.

18. In the decision in case of M/s. Advani Coorlikon (P.) Ltd. (supra) the Apex Court distinguished the facts in case of ***India Pistons Ltd. Vs. State of Tamil Nadu reported in 1974 33 STC page 472***. We also perused the such decision. It was a case wherein the assessee had offered trade discount to its dealers on the sales effected. Such discount offered was in form of a credit to be reflected in the account of the dealer. Such credit could be used by the dealer only for the purpose of making laser purchases from the assessee. It was in this background the Division Bench of Madras High Court held that such discount cannot be excluded from the computation of turnover for the purpose of Central Sales Tax Act. Facts in our case are, however, different. The discount the assessee offered to its dealer was in cash but proportionate to the total sales effected by an individual dealer. The amount of discount depended on such total sales. In view of the decision of the Apex Court in case of M/s. Advani Coorlikon (P.) Ltd. (supra), such discount would not form part of the sale price that the assessee would receive. It is not in dispute that in the books of accounts also the assessee had shown the reduced amount as total sale price.

19. The Rajasthan High Court also in case of Commissioner of Income Tax Cs. Pesticides India Ltd. (supra) taken a similar view. In the said decision, while examining a very

similar issue, the Division Bench observed as under:

“36. The expression “turnover” has reference to sale proceeds of sale of goods/services traded by the assessee. The expression “turnover” in relation to business conveys multiple meanings. In one sense, it is considered to be a volume of business, which in the case of a manufacturer may include total goods produced and disposed of in a given time or in another case may indicate turning over of capital involved in business or in yet another sense it may mean profits derived from a business in a given time. However, when turnover is used in relation to trading business, it refers to turnover of sales or volumes of sales of goods or services.

40. In the present case, the issue is about the turnover of sale of goods only. The turnover of sales for a period in the present case, the previous year relevant to the assessment year 1990-91, in its ordinary sense denotes the aggregate of price received or receivable by the company in respect of sale of goods transacted by it. No other specific meaning has been assigned to it. If sale of goods is to be understood as defined in the Sale of Goods Act, the price received/receivable becomes an integral part of the sale transaction.”

20. We also notice that in case of ***Union of India and ors. vs. Bombay Tyres International (P) Ltd. reported in (2005) 3 SCC 787*** in context of valuation for the purpose of collection of excise, the Apex Court observed as under:

“3(1) Trade discounts:- Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or be established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted

from the invoice price.”

21. In view of the above discussion, we are of the opinion that the Tribunal committed an error in holding that trade discount made to the assessee should form part of total turnover for the purpose of computing deduction under Section 80HHC of the Act.

In the result, we answer the question in the negative i.e. in favour of the assessee and against the revenue. To the above extent, judgement of the Tribunal stands reversed. Appeal is allowed and disposed of.

Sd/-

[AKIL KURESHI, J.]

Sd/-

[HARSHA DEVANI, J.]