

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1208 of 2008

With

TAX APPEAL NO. 1209 of 2008

With

TAX APPEAL NO. 1210 of 2008

With

TAX APPEAL NO. 1213 of 2008

With

TAX APPEAL NO. 1215 of 2008

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR.JUSTICE M.R. SHAH**

Sd/-

and

**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

Sd/-

- 
- |   |   |    |
|---|---|----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  | NO |
| 2 | To be referred to the Reporter or not ?   | NO |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   | NO |
| 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 ? | NO |
| 5 | Whether it is to be circulated to the civil judge ?   | NO |
- 

THE INCOME TAX OFFICER....Appellant(s)

Versus

SEJAL GEMS....Opponent(s)

Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MS SB SOPARKAR, SR.ADVOCATE for the Opponent(s) No. 1

---

CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**  
and  
**HONOURABLE MR.JUSTICE R.P.DHOLARIA**

**Date : 30/11/2013**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.00. As common question of law and facts arise in this group of appeals, and as such challenging the common impugned Judgement and Order passed by the learned Income Tax Appellate Tribunal and the same are with respect to same assessee but with respect to different Assessment Years, all these appeals are heard, decided and disposed of by this common Judgement and Order.

2.00. The dispute is with respect to same assessee but with respect to Assessment Years 1996-1997 to 1999-2000.

2.01. The AO held that the gross labour receipt do form part and parcel of the turnover of the assessee and accordingly the same is required to be incorporated in the amount of the total turnover and accordingly total amount of deduction under section 80HHC came to be made by taking gross amount of the labour receipts.

2.02. It is required to be noted that the AO reopened the assessment proceedings within a period of four years and thereafter in the reassessment proceedings under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the I.T. Act) recomputed the deduction under section 80HHC of the IT Act.

2.03. On appeals, the learned CIT(A) allowed all the appeals preferred by the assessee by holding the reopening to be void.

2.04. Feeling aggrieved and dissatisfied with the respective orders passed by the CIT(A) in holding the reopening to be void, the revenue preferred appeals before the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") and the learned ITAT by common judgement and order dated 30/11/2007 has upheld that the receipt of labour charges do not constitute part of the total turnover for working out deduction under section 80HHC of the IT Act and has consequently dismissed all the appeals.

2.05. Feeling aggrieved and dissatisfied with the impugned Common Judgement and Order passed by the learned ITAT, the revenue has preferred all these appeals.

2.06. While admitting all these appeals, the Division Bench has framed the following substantial questions of law :-

**"Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal is right in coming to the conclusion that receipts of labour charges do not constitute part of the total turnover for working out deduction under Section 80HHC of the Income Tax Act?"**

3.00. Having heard Mr.Sudhir Mehta, learned counsel appearing on behalf of the appellant - revenue and Mr.S.N. Soparkar, learned counsel appearing on behalf of the

respondent – assessee and considering the issue involved, we are of the opinion that the substantial question of law framed by this Court framed while admitting these appeals are required to be framed as under :-

**“Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal is right in coming to the conclusion that receipts of labour charges do not constitute part of the total turnover for working out deduction under Section 80HHC of the Income Tax Act? If yes, to what extent?”**

4.00. Heard Mr.Sudhir Mehta, learned counsel appearing on behalf of the appellant - revenue and Mr.S.N. Soparkar, learned counsel appearing on behalf of the respondent – assessee, in respective appeals.

5.00. Mr.Mr.S.N. Soparkar, learned counsel appearing on behalf of the respondent – assessee in respective appeals has fairly conceded that in view of decision of the Hon'ble Supreme Court in the case of **ACG Associated Capsules Pvt. Ltd. Vs. Commissioner of Income-Tax**, reported in **[2012] 343 ITR 89 (SC)**, the view taken by the learned ITAT while passing the impugned Judgement and Order that receipts of the labour charges do not constitute part of the total turnover for working out deduction under section 80HHC of the IT Act, cannot be sustained. However, has submitted that while working out the deduction under section 80HHC of the IT Act, net is to be excluded for claiming deduction under section 80HHC of the IT Act. In support of his above submission, he has relied upon the decision of the Hon'ble Supreme Court in the case of **ACG Associated Capsules Pvt. Ltd.** (supra).

6.00. Mr.Sudhir Mehta, learned counsel appearing on behalf of the revenue is not in a position to dispute that in the case of **ACG Associated Capsules Pvt. Ltd.** (supra), the Hon'ble Supreme Court has taken the view as submitted by Mr.Soparkar, learned counsel appearing on behalf of the assessee.

7.00. In view of the above, the common impugned judgement and order dtd. 30/11/2007 passed by the learned tribunal is hereby modified to the extent holding that for the purpose of working out deduction under section 80HHC of the IT Act, net receipts of labour charges are to be included. Now, the Assessing Officer shall pass consequential orders accordingly. With this, all these appeals are disposed of.

Sd/-  
**(M.R.SHAH, J.)**

Sd/-  
**(R.P.DHOLARIA,J.)**

Rafik.