

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 742 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE R.P.DHOLARIA**

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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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**COMMISSIONER OF INCOME TAX****Versus****SUN PHARMACEUTICAL INDUSTRIES LTD**

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**Appearance:****MRS MAUNA M BHATT, ADVOCATE for the Appellant****MR SN SOPARKAR, SENIOR ADVOCATE for the Respondent****MRS SWATI SOPARKAR, ADVOCATE for the Respondent**

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**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] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 18.08.2005 passed by the learned Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") in ITA No.249/Ahd/2001 for A.Y. 1997-96, by which the learned ITAT has allowed the said appeal preferred by the assessee and has remanded the matter to the Assessing Officer to pass fresh order considering the decision of the Special Bench of the ITAT passed in **Lalsons Enterprises Vs. DCIT (Delhi) (SB)**, reported in **89 ITD 25**, the revenue has preferred the present appeal to consider the following substantial question of law.

*"Whether the Appellate Tribunal has substantially erred in law in directing the Assessing Officer to decide the issue regarding net lease rental income (Rs.40,93,562/-) and net interest income (Rs.8,89,60,523/-) for reducing 90% of the same to arrive at profit of the business for deduction u/s 80HHC of the Income-tax?"*

[2] Heard Mr.Manish R. Bhatt, learned counsel appearing on behalf of the appellant – revenue and Mr.S. N. Soparkar, learned counsel appearing on behalf of the respondent – assessee.

[3] At the outset, it is required to be noted that now, the issue

involved in the present appeal is squarely covered by the 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)**. By the aforesaid decision, the Hon'ble Supreme Court has, as such, approved the decision of the Special Bench of the ITAT rendered in **Lalsons Enterprises Vs. DCIT (Delhi) (SB)** (supra).

[4] Considering the above facts and circumstances and applying the ratio laid down by the Hon'ble Supreme Court in the case of **ACG Associated Capsules Pvt. Ltd. Vs. Commissioner of Income Tax** (supra), the question raised in the present appeal is answered against the revenue. Consequently, the present appeal deserves to be dismissed and accordingly is dismissed. Notice is discharged.

(M.R.SHAH, J.)

(R.P.DHOLARIA, J.)

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