

IN THE HIGH COURT OF DELHI AT NEW DELHI

23.09.2009

**Present: Ms. P.L.Bansal, Advocate for the appellant.
Mr. Anoop Sharma and Mr. Manu K.Giri, Advocate for the respondent.**

**ITA No. 921/2009 COMMISSIONER OF INCOME TAX
Vs. EASTERN MEDIKIT LTD.**

The Assessing Officer initiated penalty proceedings against the respondent/assessee on the ground that in the Income Tax Return filed by the assessee for the Assessment Year 2002-2003, the assessee had claimed deduction under Section 80HHC in respect of manufacturing unit Nos. 196 and 205 and had not taken into consideration expenses of head office unit, losses of Unit No. 292. According to the Assessing Officer, it was concealment of fact in his opinion because of the judgment of Supreme Court in IPCA Laboratories Limited

Vs. Deputy Commissioner of Income Tax (266 ITR 521), the assessee was bound to show the expenses of the loss making unit as well. He, thus, passed the penalty order against which the assessee filed appeal which was decided in his favour by the CIT(A). This order was confirmed by the ITAT as well holding that the judgment of the Supreme Court in IPCA was rendered much after the filing of the return. The Tribunal has also taken note of various judgments of different High Courts on this issue on the basis of which it observed that the law on this aspect had not been categorically settled before the judgment of the Supreme Court in IPCA Laboratories and, therefore, when two views were

possible, it

cannot be said that the claim of the assessee was wrong, false or malafide. We

are of the opinion that approach of the Tribunal is correct and no question of

law arises.

Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

September 23, 2009

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