dated-23-06-2009

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI SPECIAL BENCH 'C' NEW DELHI

ITA No.1537/Del/07
Assessment Year : 2001-02
ITA No.1538/Del/07
Assessment Year : 2003-04
ITA No.1539/Del/07
Assessment Year : 2004-05
ASSTT COMMISSIONER OF INCOME TAX
RANGE-II, MORADABAD
vs
M/s HINDUSTAN MINT & AGRO PRODUCTS PVT LTD
CHANDAUSI

Vimal Gandhi, President R P Garg, Senior VP G E Veerabhadrappa, VP I P Bansal, JM and C L Sethi, JM

Appellant Rep by : Shri R S Meena, CIT DR, L M Pandey, CIT DR
Respondent Rep by : Shri Piyush Kaushik, Rajesh Jain

INTERVENERS
ITA No.1827/Del/07
Assessment Year : 2003-04
Dy COMMISSIONER OF INCOME TAX
CIRCLE-12(1), NEW DELHI
vs
M/s HONDA SIEL POWER PRODUCTS LTD
PLOT NO 5, SECTOR-41, (KASNA)
GREATER NOIDA INDL DEV/AREA, DISTT
GAUTAM BUDH NAGAR, UP
ITA No.4409/Del/03
Assessment Year : 1998-99
ASSTT COMMISSIONER OF INCOME TAX
RANGE-I, MORADABAD
vs
M/s JUBILANT ORGANOSYS LTD
GAJRAULA, J P NAGAR, UP

Appellant Rep. by : Shri Ajay Vohra, Shri Rohit Jain, Shri Rohit Garg

ORDER

Per : Vimal Gandhi:

This Special Bench was constituted on the recommendation of the regular Bench which was hearing above appeals. The controversy relates to the computation of deduction u/s 80HHC to an assessee (industrial undertaking) after it has been allowed deduction u/s 80-EB of the Income Tax Act. In other words, the effect of provision of Section 80-IA(9) introduced w.e.f. 1.4.1999 is to be seen.

2. Earlier Special Bench (ITAT 'D' Bench) at Chennai in the case of *ACIT Vs Rogini Garments (2007) 108 ITD 49* was constituted to consider similar controversy when conflict of views between different benches of ITAT was found. The Special Bench after hearing both the parties had held that where deduction u/s 80HHC as also u/s 80-IA are claimed for AYs 1999-2000 and "2002-03, then relief allowed u/s 80-IA is to be deducted from profits and gains of assessee's business on which relief u/s 80HHC of the Act is to be computed. After the above Special Bench, the Hon'ble Madras High Court in the case of SCM Creations decided the same question and took a view which some benches thought was different from the view taken by Special Bench in the case of Rogini Garments. It was thought by these benches that Rogini Garments is no more applicable after the decision of SCM Creations (supra). The referral Bench hearing these appeals noticed that Delhi 'F' Bench of the Tribunal, in case of *Sarla Fashions & Modi Exports (ITA No. 1799 & 1085/D/06 for AY 2001-02 and 2002-03),* decided a similar view in favour of the assessee in the light of above decision of Hon'ble Madras High Court. Similarly, Delhi Bench of the Tribunal in the case of *Anil Kumar Rastogi Vs ACIT and Stanrose Mesowares (P) Ltd. Vs ACIT (ITA No. 2465/D/07 and ITA No. 1567/D/07)* respectively took a similar view in favour of the taxpayer. Above case fell under the jurisdiction of Allahabad High Court. The Revenue had submitted before the referral Bench that Delhi Tribunal in above cases committed an error in not properly considering the decision of the Hon'ble Madras High Court in the case of SCM Creations. The revenue further relied upon the decision of the Delhi Bench in the case of *Modi Exports Vs ACIT 24 SOT 526* where the case of SCM Creations (supra) was held to be not applicable. Several other Benches have held that applicability of Special Bench decision in the case of Rogini Garments was not affected by decision of Hon'ble Madras High Court in the case of SCM Creations. The referral Bench, in the light of conflict of views of different benches, thought it proper to refer the matter to the President for constitution of a larger special bench. Accordingly, a Special Bench of five Members was constituted to consider the following question:-

"Whether in view of the provisions of Section 80-IA(9) read with Section 80IB(13), the deduction of income under Chapter VI-A can be allowed on the entire profit and gains of an undertaking or an enterprise of an assessee or it is to be allowed on such profit and gains as are reduced by the deduction claimed and allowed under section 80IB/80IA."

3. That during the course of hearing, it was agreed between the parties that the referred question be considered in the light of facts emerging in ITA No.1537/D/07 in the case of Hindustan Mint & Agro Products Pvt. Ltd. for Asstt. Year 2001-02 and decision made applicable in other cases. 3..1 The assessee in the above case had not claimed deduction u/s 80-IB in the original return. The return was revised to claim deduction under above section. It appears that deduction claimed was allowed. Subsequently, notice u/s 148

dated 19.11.04 was issued. In response thereto, the assessee again filed return showing nil income. The case was taken as scrutiny assessment case. It was found that the assessee in the relevant period had manufactured and exported Menthyl Acetate, Mint Terpins, Basil Oil and its allied products to the foreign buyers and had claimed to be 100% exporter. It claimed deduction u/s 80HHC at 50% of the gross total income i.e. at Rs.35,26,121. The deduction u/s 80-IB was claimed at Rs.13,22,907 being 30% of total business profit of the undertaking. While computing deduction u/s 80HHC the deduction allowed u/s 80-IB was not taken into consideration (deducted) in the claim.

4. The Assessing Officer raised a query as to why deduction u/s 80HHC be not reduced by the amount of deduction allowed u/s 80-IB in the light of provision of Section 80-IA(9) r/w Section 80-IB(13). The assessee, in response to above query, and while opposing above action, relied upon provisions of Section 80AB and also on decision of ITAT SMC Bench Jaipur. In the light of provisions of Section 80-IA(9), the AO held that deduction u/s 80HHC was to be reduced by amount of deduction allowed u/s 80-IB. The AO computed total business profit of the undertaking at Rs.49,22,748. From the above profit, he reduced export incentive amounting to Rs.7,64,425 and worked out deduction u/s 80-IB at Rs.12,47,545 being 30% of business profit. In the light of deduction allowed u/s 80-IB, the eligible business profit for computation of deduction u/s 80HHC was taken at Rs.36,75,203/- (Rs.49,22,748 - Rs.12,47,545). This way, profit for computing deduction u/s 80HHC was reduced by deduction allowed u/s 80-IB of the Income Tax Act.

4.1 The aforesaid action of the AO was challenged by the assessee in appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. It was claimed that the view taken by the AO was erroneous and his reliance on decision of Supreme Court in the case of Cambay *Electric Supply Industrial Co. Ltd. Vs CIT 113 ITR 84* misplaced. The ld. CIT(A), in his order, relied upon decision of Allahabad High Court in the case of *CIT Vs Mentha & allied Products (P) Ltd. 7 MTC 625* and other decisions of the same Court noted in para 4 of his order. In these cases, it was held that duty drawbacks received by the respondent assessee could not be treated as profits "derived" by the assessee and, therefore, the said sum could not be considered for relief u/s 80HHA of the Income Tax Act. Ld. CIT(A) followed above decision of Allahabad High Court as far as treatment of duty drawbacks was concerned.

5. That as regards the question of computation of deduction u/s 80HHC and 80-IB, the ld. CIT(A) referred to in detail to the statutory provisions of above sections and held that he was unable to accept the contention of learned counsel for the assessee that phraseology in Section 80-IB was different than used in other sections and, therefore, deduction u/s 80HHC was to be computed differently.

6. The ld. CIT(A) further observed that the AO did not refer to any specific case law on the issue and has relied on decision of Supreme Court in the case of *CIT Vs Sterling Foods, 237 ITR 379* and *Cambay Electric Supply Co. Ltd. Vs CIT 113 ITR 84***)**. However, these cases were not directly on the issue. On the other hand, the ld. CIT(A) found that Hon'ble Jaipur Tribunal in the case of *Toshika Creations, 96 TTJ 651* Hon'ble Bangalore

Bench in the case of *Mittal Clothing Vs DCIT, 4 SOT 626*. Hon'ble Delhi Bench, *SMC in the case of ITO Vs M/s R.V. Diamond Jewellers (P) Ltd. decided on 3.11.2005* and Delhi Tribunal in the case of *DCIT vs Eltek SJS (P) Ltd., 10 SOT 178* had held that exclusion of deduction u/s 80IB for computing deduction u/s 80HHC was not permissible. In light of the aforesaid decisions of the jurisdictional Tribunal, the AO was directed to allow deduction u/s 80HHC without reducing or considering deduction allowed u/s 80IB-of the Act.

7. The revenue, being aggrieved, has brought the issue in appeal before the Appellate Tribunal and, ultimately, the issue has come up for the consideration of the Special Bench.

8. We have given careful thought to the rival submissions of the parties. The controversy before us is to find the legal effect of Section 80-IA(9) r/w Section 80-IB(13) of the Income Tax Act on the claim of the other deductions under Chapter 'C' (of Chapter VI-A) of the I.T.Act. The relevant provisions are as under-

"Section 80-IA (9) - Where any amount of profits and gains of an undertaking or of an enterprise in the case of an asses see is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C-Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be."

Section 80-IB (13) - The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 8,0-IA shall, so far as may be, apply to the eligible business under this section."

8.1 Sub-section (13) of Section 80-IB is consequential as certain provisions of section 80-IA are imported and made applicable to Section 80-IB. We are really concerned with application of sub-section (9) of Section 80-IA which was introduced w.e.f. April, 1999 by the Finance (No.2) Act 1998.

9. In the case of *Asstt. CIT vs. Rogini Garments 108 ITD 49 (Chennai)(SB)*, the Special Bench was constituted to consider the following question:

" Whether relief under section 80IA should be deducted from profits and gains of business before computing relief under section 80HHC? "

The Bench noted the change made by sub-section (9) of Section 80IA. It also considered Circular No. 772 dated 23.12.1998. Before the Bench, it was pleaded that section 80IA(9) did not curtail scope of deduction u/s 80HHC and this position was more than clear from circular dated 23.12.1998. It was submitted that section 80HHC was a complete Code and there was no scope, having regard to the language of that section, to reduce the amount of relief allowed u/s 80IA of the Income-tax Act. Reliance before the Bench was placed on decision of Income-tax Appellate Tribunal, Delhi Bench in the case of *Dy. CIT vs. Eltek*

SGS (P) Ltd. 10 SOT 178 The Bench's attention was also drawn to the decision of the Apex Court in the case of *Britannia Industries Ltd. Vs. CIT 278 ITR 546)* wherein it has been held that when the language of Statute is clear and unambiguous, the Courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the Statute. Reference was also made to decision of Bangalore Bench of the Tribunal in the case of *Mittal Clothing Co. vs. Dy. CIT 4 SOT 626*. On the basis of decision of Apex Court in the case of *Bajaj Tempo Ltd. vs. CIT 196 ITR 188*, it was submitted that a taxing statute granting incentive for promoting growth and development should be liberally construed. Some other decisions of Benches in which it was held that while computing deduction u/s 80HHC, deduction allowed u/s 80IA was not to be deducted, were cited before the Special Bench. The Bench has also noted in detail the submissions of the revenue opposing arguments advanced on behalf of the assessee and the Interveners.

10. After considering rival submissions of the parties, the Special Bench held that language of section 80IA(9) was plain and, therefore, its obvious meaning was to be applied. Amendments in section 80IA were made to avoid repeated deductions in respect of same eligible profit so that unintended benefits may not pass on to the assessee. It was further held that a Special Provision like Section 80IA(9) should prevail over the General Provisions. The Bench held that if restrictive clause, not in the same section but in some other provision, is clearly showing mens legis, it has to be given full effect. Therefore, if restriction is placed on the claim of repetitive deduction in section 80IA(9) and is made applicable in respect of all deductions under Chapter VIA, then this restriction is to be applied since the words used are," any other deduction under Chapter VIA". Full effect is to be given to this provision and wherever an assessee wants to claim deduction u/s 80IA(9), restriction is to be read in every other provision providing for deduction under 'C of Chapter VIA. The Special Bench also observed that the circular relied upon by the learned counsel for the assessee nowhere suggest that more than 100% deduction on the same profit can be granted to the assessee under various sections enumerated in Chapter VIA. The Bench relied upon decision in the case of *CIT vs. Sharon Vaneers (P) Ltd. [TC(A) No. 62 of 2004, dated 26.2.2007]* to hold that it is not correct to say that section 80HHC of the Act is a self contained provision. A deduction under above provision cannot be allowed ignoring the restrictive clause contained in section 80IA(9). The question referred to the Special Bench was accordingly answered.

10.1 The aforesaid decision of the special bench was required to be followed and applied by all regular benches in due course. This, however, did not happen. Different benches of the Tribunal have failed to follow a uniform approach. In fact, some benches have taken views diagonally opposite to views expressed by the special bench. These benches followed the decision of the Hon'ble Madras High Court in the case of *SCM Creations Vs ACIT 304 ITR 319* with the observations that above case was one of the-interveners in Special Bench case of Rogini Garments (supra) and on further appeal, the Hon'ble High Court reversed the view of the Tribunal. Thus, the decision of the special bench was taken as superseded and no more valid or applicable. Other circumstances which led to the constitution of the special bench have already been noted.

11. Shri R.S. Meena, ld. CIT (DR.) has contended that the language employed in section 80IA (9) and section 80IB (13) of the Income-tax Act, 1961 (The Act') is plain, simple, clear and unambiguous, and in order to determine the true and correct meaning of the provisions contained in section 80IA(9) and 80IB (13), no words or meaning should be added thereto, and only the language used therein ought to be considered to ascertain the proper meaning and intend of the legislature. The ld. D.R. pleaded that plain reading of section 80IA(9) and 80IB (13) suggests that where any amount of profits and gains is claimed and allowed as deduction u/s 80IA/80IB for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provision of Chapter VIA under the heading "deductions in respect of certain income", and shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise, as the case may be.

11.1 Ld. D.R. further contended that section 80IA(9) has been inserted in the statute in order to check misuse of provisions relating to the deductions/relief granted to the taxpayer under the Act and also to put to rest the confusion created by the conflicted judgements of various High Courts and different Benches of the Tribunal. Sub section (9) was inserted by the Finance (No. 2) Act, 1998 with effect from 01.04.1999 in section 80IA as that stood before insertion of the present section 80IA with effect from 01.04.2000. Sub-section (9) was introduced in Section 80IA, and made applicable to section 80IB also. He then made a reference to the notes on clauses explaining the various provisions contained in the Bill inserting the aforesaid sub section (9) where it was explained that the legislature proposed to insert a new sub section (9) in section 80IA so as to provide that where an amount of profits and gains of an industrial undertaking or a hotel, is claimed and allowed under the said section, the profit to that extent shall not be qualified for deduction for that assessment year under any other provisions of Chapter VIA of the Act and in no case shall exceed the eligible profits of the industrial undertaking or hotel, as the case may be. The ld. D.R. then made a reference to the Heydon's Rule of Mischief to contend the while considering the meaning and scope of section 80IA(9), a regard must be had not only to the existing law but also to prior legislation and to the judicial interpretation thereof. He further pleaded that if the whole scheme of the Act and the judicial interpretation thereof are considered, the provisions of section 80IA(9) would make it clear that "profits of the business" for the purpose of calculation of deduction u/s 80HHC are to be reduced by the amount of deduction allowed u/s 80IA and 80IB of the Act. He then pleaded that in that view of the matter, the profit derived from export will be reduced by the amount of deduction already allowed under section 80IA and 80IB, and the deduction u/s 80HHC will be allowed on the remainder only.

11.2 In support of the contention that a fiscal statute shall have to be interpreted on the basis of the language used therein and not de hors the same; and no words ought to be added and only the language used therein ought to be considered so as to ascertain the proper meaning and intent of the legislation, the ld. D.R. has relied upon the following decisions:-

(i) *Orissa State Warehousing Corporation vs. CIT reported in 237 ITR 589 (SC);*

(ii) *Patil Vijay Kumar & Ors. Vs. Union of India and Another reported in 151 ITR 48 (Kar.);*

(iii) *Ipca Laboratory Ltd. vs. DCIT reported in 266 ITR 521 (SC)*

(iv) *Indian-Rayon Corporation Ltd. vs. CIT reported in 231 ITR 27 (Mum);*

(v) *Smt. Tarulata Shyam Vs. CIT reported in 108 ITR345 (S.C.);*

(vi) *Kota Co-operative Marketing Society Ltd. vs. CIT reported in 207 ITR 608 (Raj);*

(vii) *M.P. Poddar (HUF) vs. Appropriate Authority reported in 240 ITR 372 (Del);*

(viii) *Keshavji Ravji and Co. vs. CIT reported in 183 ITR 1 (SC)*

(ix) *Federation of Andhra Pradesh Chambers of Commerce & Industry vs. State of Andhra Pradesh reported in 247 ITR 36 (SC).*

11.3 The ld. D.R. further submitted that it would be wrong to say that section 80HHC of the Act is a code by itself. He relied on the Supreme Court decision in the case of *CIT vs. Shirke Construction Equipment Ltd. 291 ITR 380 (SC)*

He submitted that the decision of the Bombay High Court and the Kerala High Court in the case of CIT vs. Shirke Construction Equipment Ltd. and CIT vs. T.C. Usha respectively have been held to be not correct law by the Supreme Court in the case of Shirke Construction Equipment Ltd. (supra). In this connection, he also made a reference to the following decisions:-

(i) *ITO vs. Induflex Products (P) Ltd. 280 ITR 1 (SC)*

(ii) *P.R. Prabhakar Vs. CIT, Coimbatore 284 ITR 548 (SC)*

(iii) *Asvini Gold Storgare (P) Ltd. Vs. CIT 290 ITR 183 (Mad.);*

(iv) *CIT vs. Exports Apparel Group Ltd. 299 ITR 176 (Delhi).*

11.4 Having contended so, the ld. DR further submitted that the matter that calls for consideration by this Special Bench has been examined in great detail and at length by the Special Bench, ITAT, Chennai Bench in the case of *ACIT vs. M/s. Rogini Garments reported in 294 ITR (AT) 15 (SB) (Chennai)*

where the assessment years involved were 1999-2000 and 2002-03 and it was held by the Special Bench that it is not correct to say that section 80HHC of the Act is a self-contained provisions, and that the deduction u/s 80HHC cannot be allowed by ignoring the restrictive clause contained in section 80IA(9), which makes it abundantly clear that wherever deduction under any provisions of Chapter VIA, under the heading "C-

Deductions in respect of certain incomes", is claimed, the computation will be subject to the restrictions laid down in section 80IA(9) of the Act. He further submitted that the view taken by the Special Bench in the case of Rogini Garments (supra) has been followed in the following cases:-

(i) *Bansal Impex vs. CIT, ITAT, Delhi, 'H' Bench*

(ii) *Nodi Exports vs. ACIT, Muradabad, ITAT, Delhi F*

(iii) *M/s. Laben Laboratories vs. DCIT 107 ITD 271 (Mum)*

(iv) *CIT vs. Rochiram and Sons 271 ITR 444 (Rajasthan)*

(v) *ITO vs. Anil Kumar Rastogi, ITAT, Delhi 'G' Bench (ITA Nos. 1542 & 1543/Del/2007 (A.Y. 2001-02 and 2002-03) and 1544 & 1545/Del/2007 (A.Y. 2003-04 and 2004-05).*

11.5 At this stage, the ld D.R. pointed out that an impression has been sought to be created that the issue that falls for consideration by this Special Bench is covered by the decision of Hon'ble Madras High Court in the case of *M/s. SCM Creations reported in (2008) 304 ITR 319* but this is factually incorrect. He submitted that the decision of the Hon'ble Madras High Court in the case of SCM Creations (supra) have not taken cognizance of the material changes brought about by the inserting sub section (9) in section 80IA of the Act with effect from 01.04.1999. He further submitted that the ld. counsel appearing before the Hon'ble Madras High Court did not refer to the provisions of section 80IA(9) and, hence, their lordship had no occasion to look into or examine the change made with effect from 01.04.1999. However, it was emphasized that there has been a sea change in the circumstances with regard to the allowability of claim u/s 80IA/80IB vis-a-vis section 80HHC of the Act. He then submitted that this aspect of the matter about the change in the position of law has been rightly pointed out by the ITAT, Delhi 'F' Bench in the case of M/s. Nodi Exports vs. ACIT, Muradabad.

11.6 He then made a reference to the decision of Hon'ble Madhya Pradesh High Court in the case of *J P Tobacco Products Pvt. Ltd. vs. CIT 229 ITR 123* and contended that this decision was rendered in the context of pre-amendment position of law before the insertion of sub section (9) to section 80IA of the Act. The Hon'ble Madhya Pradesh High Court has categorically noted the fact that the case before them was prior to the amendment of the nature that has been subsequently brought in the statute. Referring to the decision of Hon'ble Madras High Court in the case of SCM Creations (supra), the ld. D.R. submitted that the Hon'ble Madras High Court in the case of SCM Creations (supra) merely followed their earlier decision in the case of *CIT vs. V. Chinnapati 282 ITR 389*, which case, in fact, pertained to the assessment year not covered by the amendment leading to the insertion of section 80IA(9), though the case of *SCM Creations vs. ACIT (2008) 304 ITR 319* was pertaining to the assessment year 2002-03 and 2003-04, i.e. related to the post amendment period, but this difference was not pointed out by either side to the Hon'ble Madras High Court. He submitted that having regard to the specific and unambiguous provisions contained in sub section (9A) of section 80IA, the deduction

u/s 80HHC is to be allowed only after deducting from the profits and gains of assessee's business the amount of deduction allowed u/s 80IA/80IB of the Act. In view of the aforesaid submissions, the ld. D.R. then submitted that the judgement of the Hon'ble Madras High Court in the case of M/s. SCM Creations (supra) does not lay down the correct position of law, and, consequently, the decision of the Special Bench in the case of Rogini Garments is to be held as a correct decision laying down the correct position of law. It was argued that in the absence of clear statutory indication to the contrary, the statute should not be read so as to permit an assessee two deductions. The ld. D.R., then, pleaded that this preposition that no double deduction on the same amount could have been intended by the legislature should be applied in the present case, and, consequently, the issue raised before the Special Bench be decided in favour of the revenue and against the assessee.

Submission for the assessee

12. The ld. counsel for the assessee, Shri Piyush Kaushik, Advocate has submitted that section 80IA/80IB and section 80HHC operate in fields to serve different objectives. The objective behind section 80IA/80IB being to provide stimulus to undertakings engaged in the business of infrastructure development etc. whereas the objective behind section 80HHC is to provide stimulus in export business. He further submitted that sections 80IA/80IB are undertaking based sections, wherein it is necessary to have an undertaking engaged in the specified activities in order to avail deduction under these sections. Whereas section 80HHC is an activity based section focusing on profits derived from export business. Section 80HHC is a special provision providing for an independent methodology for computing eligible profits of the business for computing deduction available u/s 80HHC of the Act. He further contended that section 80AB of the Act governing all provisions under the heading 'C' of Chapter VIA specifically provides that in the computation of deduction under any section under the heading 'C' of Chapter VIA, the income on which deduction will be available shall be the income computed in accordance with the provisions of the Act before making any deduction under the heading 'C of Chapter VIA. He further submitted that section 80AB is a non-obstante clause in nature as it starts with the expression "notwithstanding anything contained in any other section under the heading 'C in Chapter VIA". He then pleaded that the provision of section 80AB have been given an overriding effect over all other sections in Chapter VIA of the Act as so held by the Hon'ble Supreme Court in the case of *IPCA Laboratory Ltd. vs. DCIT (2004) 266 ITR 521 (SC)* and in the case of *CIT vs. Shirke Constructions Equipment Ltd. 291 ITR 380 (SC)* He then made a reference to the decision of ITAT, Jaipur Bench, in the case of *Tashica Creation vs. ITO 96 TTJ 651* where the impact of overriding provisions of section 80AB was considered and it was then held therein that deduction u/s 80HHC should be allowed on gross basis without reducing from profits eligible for deduction u/s 80HHC the deduction claimed and allowed u/s 80IB of the Act. He further pointed out that this vital aspect, i.e. the impact of overriding provisions of section 80AB on the controversy involved in the present cases, was not at all considered and addressed in the case of Rogini Garments (supra) decided by the Special Bench of ITAT.

12.1 Referring to the section 80HHC(1) of the Act, the ld. counsel for the assessee submitted that the provisions of section 80HHC(1) specifically provides that the deduction u/s 80HHC shall have to be computed in accordance with and subject to the provisions of section 80HHC of the Act, and it is a special provision providing for availability of deduction in respect of profits derived from export business. He further submitted that the provisions of section 80HHC nowhere permits reduction of profits to the extent deduction is claimed u/s 80IB or 80IA while computing the profit eligible for deduction u/s 80HHC of the Act. In this context, he then submitted that the provision of section 80IA(9) does not contain a non-obstante clause so as to supercede the specific provision of section 80HHC or for that matter any other section under the heading 'C' of Chapter VIA. The ld. counsel for the assessee then submitted that if the provision of section 80IA(9) are to be read as reducing from the profits eligible for deduction u/s-80HHC the deduction allowed u/s 80IA or 80IB, then such interpretation would be in manifest contradiction to the provisions of section 80AB which override all the provisions of Chapter VIA and which specifically provide by way of non-obstante clause that in computing deduction under any section under the heading 'C' of Chapter VIA, the income on which such deduction shall be entitled" shall be the income computed under the provisions of this Act before making any deduction under Chapter VIA. The ld. counsel for the assessee further submitted that there is an apparent conflict between two independent provisions of the Act i.e. between section 80IA/80IB on the one hand, and section 80HHC, on the other hand, and the provisions of section 80IA(9) are in manifest contradiction to the provisions of section 80AB which is actually governing section for claiming deduction under Chapter VIA and is intended to override all other provisions of Chapter VIA of the Act. He, therefore, submitted that the primary rule of "literal interpretation" applied by the Special Bench in the case of Rogini Garments (supra) to the provisions contained in section 80IA(9) should not apply to the present controversy but rather the principle of harmonious construction have to be resorted to.

12.2 In support of the proposition that departure from the "rule of literal construction" would be legitimate so as to avoid any part of the statute becoming meaningless, the ld. counsel for the assessee has made a reference to the rule of interpretation of statute as per commentary on "principle of statutory interpretation" by Justice G.P. Singh.

12.3 On the principle of interpretation, the ld. counsel for the assessee relied upon the following decisions:-

"(i) *Raj Krishna Base Vs. Binod Kanungo AIR 1954 SC 202*

(It is usual when one section of an Act takes away what another confers to use a 'non-obstante' clause and say that 'notwithstanding anything contained in the section so and so, this or that will happen" otherwise, if both sections are clear, there is a head on clash. It is the duty of the courts to avoid that and whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonize.).

(ii) *Sultana Begum vs. Prem Chand Jain AIR 1997 SC 106*

(When there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible effect should be given to both). This is the essence of rule of 'harmonious construction'. The courts have also to keep in mind that an interpretation which reduces one of the provisions to a 'dead letter3 or 'useless lumber' is not harmonious construction. To harmonize is not to destroy any statutory provision.

(in) *Siraj-ul-Haq and Others vs. The Sunni Central Board of Waqf U.P. AIR 1959 SC 198*

(It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction, which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute.)

(iv) *D. Sanjeevayyd vs. Election Tribunal AIR 1967 SC 1211*

(It was held in this case that provisions of one section cannot be used to defeat those of another unless reconciliation is impossible. It was held that provisions of statute should be read so as to harmonize with one another.) "

12.4 The ld. counsel for the assessee then submitted that in order to harmonize the interpretation of provision of section 80IA(9), section 80HHC and section 80AB, it would be useful to look into the legislative intent and purpose of introducing section 80IA(9) of the Act, which vas inserted by the Finance (No. 2) Act of 1998 with effect from 01.04.1999. (it was originally sub section of the (9A) old section 80IA). He then made a reference to the circular No. 772 dated 23.12.1998 of *CBDT reported in 235 ITR (statute) 35* and also the memorandum explaining the provisions of Finance Bill (No. 2) 1998 explaining the intention behind introducing the provisions of section 80IA(9) of the Act. He then drew the attention of the Bench to the aforesaid Circular and the memorandum and then submitted that section 80IA(9) has been inserted with a view not to prevent claim of deduction under more than one section of Chapter VIA, where the assessee satisfied the conditions of these sections, but only to ensure that the sum total of the deduction so claimed by the assessee does not exceed the profit and gains of the undertaking in respect of which deductions are allowable.

12.5 In support of this proposition, the ld. counsel for the assessee placed reliance upon the following decisions:-

(i) *Mittal Clothing Company vs. DCIT 4 SOT 626;*

(ii) *Man Shariff Vs ACIT (2006) 7 SOT 57.*

12.6 On the significance of Circular of CBDT in the interpretation of statutes, reliance was placed on the following decisions by the ld. counsel for the assessee:-

(i) *Collector of Central Excise Vs. Dhiren Chemical Industries 254 ITR 554 (SC)*

(If the circulars placed a different interpretation, that interpretation will be binding on the revenue.)

(ii) *Union of India vs. Azadi bachao Andolan (2003) 263 ITR 706* (Circulars issued by CBDT are binding on the department even if they deviate from the provisions of the Act.

(iii) *CIT vs. Vaidya (M.K.) 224 ITR 186 (Kar.)*

(Circular issued by the CBDT are not only binding on the Income Tax Department but are also in the nature of contemporanea expositio furnishing legitimate aid in the construction of a provision.)

12.7 He then contended that it would be highly unfair and incorrect to stretch section 80IA(9) to contend that deduction u/s 80HHC should always be allowed on net basis i.e. after reducing the deduction allowed u/s 80IA or 80IB from the profits eligible for deduction u/s 80HHC, even though by claiming deduction on gross basis the total deduction claimed under-Chapter VIA do not exceed the profits of undertaking. He then submitted that such a contention will have the lmpact of rendering the provision of section 80HHC and also section 80AB completely otiose being a highly unfair and unwarranted situation. He then submitted that if by claiming deduction u/s 80HHC on gross basis the total deduction availed by the assessee under Chapter VIA do not exceed 100% of the profit and gains of the undertaking then the assessee's claim under section 80HHC at gross basis as per the methodology prescribed u/s 80HHC should not be disallowed. He then submitted that effect should be given to the provision of sections 80HHC and 80AB and also to legislative intent behind introducing section 80IA(9) so that the inconsistencies between section 80AB, 80IA(9) and 80HHC are removed and the matter is brought to its logical conclusion.

12.8 With reference to the scope and meaning of Board Circular No. 772 dated 23.12.1998, the ld. counsel for the assessee submitted that the said Circular has been highly misread by Special Bench of ITAT in the case of Rogini Garments (supra) while observing that based on the said circular, the assessee was justifying a claim of more than 100% of the profit of undertaking as a deduction. He contended that this understanding of Special Bench is incorrect since it is not at all the assessee's case that more than 100% of deduction of profits and gains of undertaking is to be allowed but on the contrary in the facts of the present case, the assessee had on its own in its return of income restricted the total claim to 100% of profits of undertaking as details hereunder:-

AY 2001-02

Particulars	**Amount Rs.**
Total profit of undertaking as per Assessment Order	49,22,748/-
Deduction u/s 80-IB as per Assessment order	12,47,545/-
Deduction u/s 80HHC if computed on gross basis	39,38,198/-

Total of deduction u/s 80IB plus 80HHC	51,85,743/-

It is important to note that though the sum total of deduction u/s 80IB plus 80HHC exceeds total profits of the undertaking, however, the assessee had restricted the claim of deduction under Chapter VIA up till total profits of the undertaking and has accordingly filed its return of income at Nil income and not at a loss figure.

AY 2003-04

Particulars	**Amount Rs.**
Total profit of undertaking as per Assessment Order	30,33,713/-
Deduction u/s 80-IB as per Assessment order	3,88,593/-
Deduction u/s 80HHC if computed on gross basis	12,92,198/-
Total of deduction u/s 80IB plus 80HHC	16,80,791/-

In this year though the deduction u/s SOHHC is computed on a gross basis, however the sum total of deduction under Chapter VIA is much lower than the profits of the undertaking.

AY2004-05

Particulars	**Amount Rs.**
Total profit of undertaking as per Assessment Order	28,60,977/-
Deduction u/s 80-IB as per Assessment order	3,03,293/-
Deduction u/s 80HHC if computed on gross basis	7,20,966/-
Total of deduction u/s 80IB plus 80HHC	10,24,259/-

In this year also though the deduction u/s 80HHC is computed on a gross basis, however the sum total of deduction under Chapter VIA is much lower than the profits of the undertaking. "

12.9 The ld. counsel for the assessee then pleaded that if by claiming deduction u/s 80HHC on gross basis, the total deduction availed by the assessee under Chapter VIA do not exceed 100% of the profits and gains of the undertaking, then the assessee's claim u/s 80HHC on gross basis as per methodology prescribed u/s 80HHC should not be disallowed.

13. To support his aforesaid contentions, the ld. counsel for the assessee made a reference to similar controversy arising in the context of sections 80HH and 80I of the Act, which has been stated to be addressed and concluded by various High Courts including the Hon'ble Supreme Court and the CBDT.

13.1 The ld. counsel for the assessee then submitted that the controversy arising about the meaning and scope of section 80HH(9) has been considered and resolved by the Hon'ble Madhya Pradesh High Court in the case of *J.P. Tobacco Products Ltd. vs. CIT reported in 229 ITR 123*. Relevant observations of the High Court shall be discussed hereinafter.

13.2 It was further submitted by the ld. counsel for the assessee that based on the reasoning laid down by the Hon'ble Madhya Pradesh High Court in the case of J.P. Tobacco Products Pvt. Ltd. (supra) the division benches of the ITAT in the following cases had held that section 80HHC does not authorize adjustment of deduction claimed under any other section in computation of profits eligible for deduction u/s 80HHC and, accordingly, deduction u/s 80HHC is to be completed in accordance with the provision of Explanation (baa) to section 80HHC on a gross basis:-

(i) *ACIT vs. Rajoo Engineers Ltd. (2006) 100 ITD 555*

(ii) *Bharat Heavy Electricals Ltd. vs. DCIT (2005) 98 TTJ 565 (Del)*

(iii) *DCIT vs. Eltek SGS (P) Ltd. (2006) 10 SOT 178*

13.3 The ld. counsel for the assessee then pointed out that the aforesaid decision of the Hon'ble Madhya Pradesh High Court in the case of J.P. Tobacco Products Pvt. Ltd. (supra) has been upheld by the Hon'ble Supreme Court in its decision in the case of *JCIT vs. Mandideep Eng. And Pkg. (India) Pvt. Ltd. (2007) 292 ITR 1 (SC)* wherein the Hon'ble Supreme Court has held that the decision of Hon'ble Madhya Pradesh High Court in the case of J.P. Tobacco Products P. Ltd. (supra) was followed by the same High Court in the case of *CIT vs. Alpine Solvene P. Ltd. (ITA No. 92 of -1999 decided on 02.05.2000)* and the revenue's special leave petition against the said decision in the case of Alpine Solvene P. Ltd. was dismissed by the Supreme Court as *reported in 247 ITR (Statute) 36.*

13.4 Further, the instruction No. 4 dated 14.08.2001 of the CBDT clarifying that deductions under section 80HH and 801 shall be given independently with reference to the gross total income was also relied upon by the assessee.

13.5 The ld. counsel for the assessee, thus, submitted that in view of (i), the decision of Hon'ble Madhya Pradesh High Court in the case of J.P. Tobacco

Products (P) Ltd. (supra); (ii) the decision of Allahabad High Court in the case of CIT vs. Lucky Laboratories Ltd. (supra); (iii) the decision of Hon'ble Supreme Court in the case of *JCIT vs. Mandideep Eng. And Pkg. (India) Pvt. Ltd. (supra) and (iv) the CBDT's instruction No. 4 dated 14.08.2001,* the deduction u/s 80-I was to be allowed on gross basis based on the following propositions:-

(i) Section 80HH and 80-I are independent sections operating in different fields.

(ii) If the assessee fulfills conditions of both these sections then it should entitled for deduction under both these section;

(iii) Section 80-I nowhere permits reduction from the profits of the undertaking the amount of deduction allowed u/s 80HH.

13.6 Applying the same analogy advanced in the context of section 80HH and 80-I, the ld. counsel for the assessee submitted that similar proposition (as set out below) would apply to the present controversy arising in the context of section 80IA/80IB and 80HHC of the Act:-

(i) Section 80IB/80IA and section 80HHC are independent section operating in different fields;

(ii) If the assessee fulfills conditions of both these sections then it should be entitled for deduction under both these sections; and

(iii) Section 80HHC nowhere permits reduction from the profits of the undertaking the amount of deduction availed u/s80A/80IB of the Act.

13.7 Above cases were not at all considered and addressed in the decision of Special Bench of ITAT in the case of Rogini Garments (supra).

13.8 With regard to the effect of Sections 80IA(9) and 80IB (13) on all other sections of Chapter VIA, it was submitted by Shri Piyush Kaushik the ld. counsel for the assessee that section 80IA(9) and 80IB (13) cannot be construed as non-obstante clause overriding all other sections of Chapter VIA as it is pertinent to note that whenever and wherever the legislature had intended to extent the restrictive clause in one section of Chapter VIA to the other independent sections of Chapter-VIA, an appropriate 'non-obstante' clause is used by the legislature in that section which was intended to be given an overriding effect. In this connection, he made reference to sub section (5) of section 80HHB, sub section (4) of section 80HHBA, sub section (5) of section 80IC, sub section (4) of section 80I and sub section (4) of section 80IE and then submitted that in all these provisions, the legislature has specifically used the non-obstante clause with the expression 'notwithstanding anything contained in any other provisions of the Act". He then highlighted that though section 80HHBA providing for deduction in respect of profits and gains from housing projects and the original sub section (9) of section 80IA was inserted by the same Finance (No. 2) Act, 1998, there exists a difference in presentation of restrictive clause in sub-section (4) of section 80HHBA with that of sub-section (9A) of section 80IA of the Act as would be evident from the different language used in these two sub sections. He submitted that sub section (4) of section 80HHBA starts with a non-obstante clause, i.e. it starts with the expression 'notwithstanding anything contained in any other provision heading 'C' Deduction in respect of certain income", which is not so provided for in sub section (9A) of section 80IA of the Act. In this sense of the analogy, he then contended that this difference in the language used in section 80IA vis-a-vis other sections as pointed out above has been rightly considered and appreciated by the Banglore Bench of Tribunal in the case of Mittal Clothing Co. (Supra), and in the case of Irfan Shariff (supra).

13.9 Against the contention of the ld. D.R. that the decision of Hon'ble Madras High Court in the case of SCM Creations (supra) did not consider the post amendment situation after insertion of sub section (9A)/(9) in section 80IA, the ld. counsel for the assessee submitted that the decision of Hon'ble Madras High Court cannot be said to be sub-silentio as because it has followed the decision of Supreme Court in the case of JCIT vs. Mandedeep Engineering and Packing Industries (P) Ltd. (supra) and the decision of Madhya Pradesh High Court in the case of J.P. Tobacco Products (P) Ltd. (supra), where the court had at length considered the situations in which a restrictive clause in one section can influence the claim of deduction of other sections. He then submitted that it would thus, be not appropriate for a Tribunal to treat the decision of High Court as sub-silentio or per incurium, and the jurisdiction to do so vests only with the Supreme Court or larger Bench of the same High Court, and the Tribunal is bound by the decision of even non-jurisdictional High Court in the absence of any contrary decision.

14. It was further pointed out by the ld. counsel for the assessee that as against the decision of Special Bench in the case of Rogini Garments (supra), the decision of Madras High Court in the case of SCM Creations vs. ACIT (Supra) has been followed by various benches of the Tribunal in large number of cases. He furnished details of the cases. Shri Ajay Vohra, the ld. Counsel for the intervener also raised argument on above lines. We would make appropriate reference to these arguments.

Rejoinder by the ld. D.R.

15. In counter reply, the ld. D.R. submitted that the full effect to section 80IA(9)/80IB(13) need to be given for the purpose for which these sections were inserted in the statute as no word is added to or subtracted from the statute by the legislature without any meaning or purpose. He then reiterated that to ascertain the true purport and object of inserting section 80IA(9)/80IB(I3) in the statute, if Hyden's Mischief Rule of interpretation of statute is to be taken into account, it would be clear that the purpose of inserting section 80IA(9)/ 80IB (13) in the statute was to restrict the allowability of same amount of deduction simultaneously under two or more sections under the Act.

15.1 We have considered rival submission of the parties. The first question before us is whether the decision in the case of SCM Creations (supra) has impliedly overruled special bench decision of Rogini Garments, notwithstanding provision of Section 80-IA(9) of the I.T. Act noted above. To answer above question, we make a ready reference to the decision. 15.2 In the case of SCM Creation (supra), their lordships have recorded as under:-

"JUDGMENT

K. Raviraja Pandian, J.- The two appeals are filed by the assessee relating to the assessment years 2002-03 and 2003-04.

The assessee is a partnership firm engaged in the business of manufacture and export of hosiery garments.

The issue involved in these two appeals are whether the relief under section 80-IA should be deducted from profits and gains of business before computing relief under section 80HHC.

Counsel on either side submits that the issue has to be decided in favour of the assessee, as this court already, by following the decision of *[2007] 292 ITR 1 (SO (Joint CIT Vs. Mandideep Engineering and Packaging Industries P. Ltd.* Corrected by order of the court (Raviraja Pandian J.) dated April 15, 2008, upon being mentioned by Senior Standing Counsel for the Income-tax Department Ed.) has decided the issue in favour of the assessee in T. C. No. 344 of 2004, (since reported as *Deputy CIT Vs. Chola Textiles P. Ltd. [2008] 304 ITR 256 (Mad.)* wherein this court has held as follows (pape 257 supra):

(underlined by us to emphasise:

"5. It is submitted across the Bar by learned counsel appearing for either side that the very issue has been considered and held against the Revenue by the Madhya Pradesh High Count in the case of *J.P. Tobacco Products P. Ltd. vs. CIT reported in [1998] 229 ITR 123.* It has also been further submitted that the Bombay High Court also has taken the same view in the case of *CIT Vs. Nima Specific Family Trust reported in [2001] 245 ITR 29.* The judgment of the Madhya Pradesh High Court has been taken to the Supreme Court and the Supreme Court in *Joint CIT v. Mandideep Engineering and Packaging Industries P. Ltd. [2007] 292 ITR 1,* has rejected the S. L. P. by giving the following reasons:

The Madhya Pradesh High Court in *J.P. Tobacco Products P. Ltd. Vs. CIT reported in [1998] 229 ITR 123* took the view that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80-I on the gross total income. Against this judgment a special leave petition was filed in this court which was dismissed on the ground of delay on July 21, 2000 *(See [2000] 245 ITR (St) 71). The decision in P. Tobacco Products P. Ltd. Vs. CIT reported in [1998] 229 ITR 123 (MP) was followed by the same High Court in the case of CIT v. Alpine Solvex P. Ltd. In I.TA. No. 92 of 1999 decided on May 2, 2000.* Special leave petition against this was dismissed by this court on *January 12, 2001, (see [2001] 247 ITR (St) 36).* This view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgment. *See CIT v. Nima Specific Family Trust reported in [2001] 248 ITR 29 (Bom.); CIT v. Chokshi Contacts P. Ltd. [2001] 251 ITR 587 (Raj); CIT v. Amod Stamping [2005] 274 ITR 176 (Guj.) CIT v. Mittal Appliances P Ltd. [2004] 270 ITR 65 (MP) ; CIT v. Rochiram and Sons [2004] 271 ITR 444 (Raj.); CIT v, Prakash Chandra Basant Kumar [2005] 276 ITR 664 (MP) ; CIT v. S. B Oil Industries P. Ltd. [2005] 274 ITR 495 (P & H); CIT v. S. K. G. Engineering P. Ltd. [2006] 285 ITR 423 (Delhi); [2005] 119 DLT 676 and CIT v. Lucky Laboratories Ltd [2006] 284 ITR 435; [2006] 200 CTR (All) 305.*

Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions

against the judgments of different High Courts following the view taken by the Madhya Pradesh High Court, we do not find any merit in this appeal. The Department having accepted the view taken in those judgments can not be permitted to take a contrary view in the present case involving the same point. Accordingly, the civil appeal is dismissed. No costs."

Following the same, the appeals are allowed to the extent indicated above. Consequently, connected miscellaneous petitions are closed. No costs."

15.3 It is clear from above that learned counsel on either side had submitted before their lordships that matter in issue has to be decided in favour of assessee following the decision of *JCIT Vs Mandideep Eng. and Pkg. India P. Ltd. 292 ITR 1* and case o*f Dy. CIT Vs Chola Textiles Ltd. 304 ITR 256* In the first case, their Lordships of Supreme Court did not allow the revenue to pursue its SLP as SLP filed against decision of M.P.High Court in the case of J.P.Tobacco Products P.Ltd. (supra) was dismissed and other decisions of different High Courts on the same issue were not challenged. In the second case, the Hon'ble Madras High Court applied the decision in the case of Mandideep Engg and Pkg. India P.Ltd. (supra). There is no separate discussion on the controversy involved. Besides, as we would presently show, above cases dealt with different situations arising under different provisions. We, therefore, do not find any support for the case of the assessee in these decisions. In the case of SCM Creations, their lordships merely followed and applied the earlier decisions as per agreement and prayer made before their Lordships by the parties. No reference was made to the statutory provision nor their lordships were called upon to decide any issue. The counsel appearing on behalf of the revenue had fairly conceded the issue without taking into account or without bringing to the notice of their lordships, the change made in statutory provisions of sub-section (9) of Section 80-IA of IT. Act w.e.f. 1.4.1999. This would be clear on a simple reference to cases cited and followed in the case of SCM Creations (supra). These cases are discussed hereinafter.

15.4 The first decision referred to by their Lordships is the decision of Madhya Pradesh High Court in the case of *J.P Tobacco Products Pvt. Ltd. Vs CIT 229 ITR 123.* The said case pertained to assessment year 1984-85. The assessee, a bidi manufacturer, had claimed deduction both u/s 80-I and u/s 80HH of the IT. Act. It was not disputed that the assessee was entitled to deduction under both the provisions. However, while computing the deduction, the AO deducted relief allowed u/s 80HH from deduction allowable u/s 80-I which was restricted to the balance amount. After noticing the claim of the parties, their lordships of Madhya Pradesh High Court allowed relief to the assessee observing as under:-

"The assessee is a private company engaged in the business of manufacturing and sale of bidis. The assessees were assessed for the assessment year 1984-85 and the Assessing Officer held that the assessee-company was not entitled to deductions under sections 80HH and 80-I of the Act. On appeal, the Commissioner of Income-tax (Appeals) held the assessee to be entitled to deduction of Rs. 1,27,813 under section 80HH and Rs. 4,52,211 under section 80-I of the Act. In computing the deduction under section 80-I,

the Commissioner of Income-tax (Appeals), however, reduced the amount of Rs. 1,27,818 allowed under section 80HH from the profits and gains from the industrial undertakings of the assessee. The assessee, in his cross-objection before the Tribunal, claimed that it was entitled to deduction under section 80-I on the gross total income but the Tribunal dismissed the cross-objection. Hence, the above question has been referred for the opinion of this court.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the assessee contended before us that the main ground for refusal to allow deduction on the gross total income under the provisions of section 80-I of the Act is the interpretation of sub-section (9) of section 80HH which provides that where the assessee is entitled also to the deduction under section 80-I or section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which section 80HH applies, effect shall first be given to the provisions of section 80HH. According to learned counsel, the said sub-section (9) of section 80HH cannot be read to say that for according deductions under section 80-I or 80J, the deductions allowed under section 80HH are required to be subtracted from the profits and gains of the industrial undertaking and then allowance is to be given at the rates provided in section 80-I or 80J on the amount of gross total income so reduced.

Learned counsel for the Department has, however, argued that the purpose of sub-section (9) of section 80HH is apparently to first allow deductions admissible under section 80HH and then to reduce the gross total income by the deductions so allowed and consider the income so reduced for the purpose of allowing deductions under section 80-I or 80J.

Sub-section (9) of section 80HH, as it stood prior to insertion of section 80-I by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, originally included only section 80J. Section 80J providing for deduction in respect of the profits and gains from newly established industrial undertakings or ships or hotel business in certain cases did not make any provision for reduction of the gross total income by the amount of deduction admissible to the assessee under section 80HH. It was only by an amendment of the said section 80J that the provision for reducing the gross total income by the amount of deduction under section 80HH of the Act by the Direct Taxes (Amendment) Act, 1974, with effect from April 1, 1974, was inserted. Section 80-I was inserted in its present form by the Finance (No. 2) Act, 1980, with effect from April 1, 1981, and by the same Finance (No. 2) Act, section 80HH (9) was amended and the words "section 80-I or" were inserted to make the said provision applicable to section 80-I as well. However, no provision was made in section 80-I to provide for deduction of the gross total income by deduction allowed under section 80HH for the purpose of allowing deduction under section 80-I. It would, thus, be seen that when section 80J already existed in subsection (9) of section 80HH, an amendment was made in section 80J in the year 1974 but no such provision was made in so far as section 80-I was concerned. This clearly contraindicates that sub-section (9) of section 80HH by itself meant that deduction allowed under section 80HH is to be reduced from the gross total income for granting the benefit of section 80J

and, for that matter, of section 80-I. It was provided in section 80J itself by later amendment while no such provision was made In section 80-I even though inserted on a later date. The provision of law is, therefore, clear that in so far as the benefit of section 80-I is concerned, it has to be granted on the gross total income and not on the income reduced by the amount allowed under section 80HH.

In the result, we find that the Tribunal was not right in holding that deduction under section 80-I is to be allowed only on the balance of the income after deducting the relief under section 80HH from the gross total income and accordingly we answer the said question in favour of the assessee and against the Revenue".

15.5 It is to be noted that the claim of the assessee was accepted by the Tribunal and accordingly, the following question was referred to the Hon'ble High Court:-

" Whether the Tribunal is right in law in holding that the deduction under section 80-I is to be allowed on balance of income after deducting the relief under section 80HH from gross total income and not from gross total income as defined in section 80B(5) of the Act? "

15.6 Their Lordships of the Hon'ble High Court answered the question in favour of the assessee. It is to be seen that there was no provision in Asstt. Year 1984-85 like Section 80-IA(9) which has been introduced by Finance (No.2) Act, 1998 w.e.f. April, 1999 only. This has been specifically noted by their lordships in the judgement as is evident from the portion highlighted. The revenue had relied in the cited case on the provisions of sub-section (9) of Section 80HH which, according to the Court, did not serve the purpose. The said provision was as under:-

"80HH (9) In a case where the assessee is entitled also to the deduction under section 80-I or section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section. "

15.7 Above sub-section obviously did not provide for reducing deduction allowed u/s 80HH while computing deduction u/s 80J. The sub-section only provided that effect shall first be given to deduction u/s 80HH if the was also entitled to deduction u/s 80I or 80J of the Act. This is what has been clearly laid down by their Lordships. There was no question of consideration of provisions of Section 80-IA(9) in that case. Above provision which is matter of main controversy in this case, in fact was not in statute book in the year under consideration by the court.

15.8 The decision of M.P. High Court was followed by the Hon'ble Bombay High Court in the case of *CIT Vs Nima Specific Family Trust 248 ITR 29.* In the said case, the assessee for the assessment year claimed deduction both u/s 80HH and 80-I at 20% of the total income. The AO allowed the deduction claimed by the assessee u/s 80-I at 20% of the total income and on the balance income, he granted deduction u/s 80HH at 20%. On further appeal, the Commissioner rejected the appeal of the assessee but the same was

allowed by the Appellate Tribunal. This led to reference of the following question to the Hon'ble High Court:-

" Whether the assessee was entitled to claim 40 per cent of the profit as deduction (20 per cent under section 80HH and 20 per cent under section 80-I) even though section 80HH(9) provides that deduction under section 80HH shall be given first, followed by deduction under section 80-I?"
15.9 Their lordships, after considering the relevant provision of Section 80HH and 80-I, held that Section 80HH(9) only referred to priorities in allowing the deduction. In other words, if the assessee was entitled to deduction u/s 80I or Section 80J as well as Section 80HH, then priority was to be given to section 80HH. Section 80HH(9) did not refer to quantum of deduction as was the case u/s 80J of the Act Their Lordships agreed with the view of Madhya Pradesh High Court in the case of J.P. Tobacco Pvt. Ltd. (supra).

16. In the case of *CIT Vs Chokshi Contacts P. Ltd. 251 ITR 587*, the assessee for the Asstt, Year 1987-88, claimed deduction both u/s 80HH and 80-I of the Act on the gross total income. The AO first allowed the deduction u/s 80HH. The deduction u/s 80-I was allowed after deducting the relief separately allowed u/s 80HH. On further appeal, the Tribunal held that assessee was to be allowed deduction u/s 80-I without deducting the relief allowed u/s 80HH. The said view of the Tribunal was challenged in reference before the Hon'ble Rajasthan High Court. Their lordships upheld the view by observing as under:-

"Chapter VI-A, which consists of sections 80A to 80V of the Income Tax Act, 1961, becomes operative on reaching the fast stage of computation of income from different sources. The expression "gross total income", in various sections of Chapter VI-A, has been assigned a special meaning to mean total income computed in accordance with the provisions of the Income Tax Act, 1961, except any provision under Chapter VI-A. Computation of gross total income of the industrial undertaking for the purpose of deduction under section 80HH and section 80-I operates independently and has to be made without making any deduction under Chapter VI-A.

The language and intent of the provisions of sub-section (9) of section 80HH make it clear that the three deductions, viz., under section 80HH, section 80-I and section 80J, are simultaneously permissible and not mutually exclusive. The provision only fixes the priority of order in which deduction under each provision is to be adjusted in the gross total income derived from such industrial undertaking to which section 80HH or section 80-I or section 80J respectively apply simultaneously. In case any industrial undertaking falls in the category of new unit established in a backward area and it is entitled to avail of the benefit under all the provisions, deduction under section 80HH is to be made in the first instance which is with an object to promote industrial establishment in backward areas and only thereafter deduction computed under section 80-I or section 80J shall be given effect to.

The assessee was an industrial company manufacturing and selling electrical contacts. For the assessment year 1987-88, the assessee claimed relief under section 80-I as well as

under section 80HH for deduction in respect of its gross total income but the computation of relief under section 80-I was made by the Assessing Officer after deducting the relief admissible under section 80HH from the gross total income computed for that purpose. The Tribunal held that the relief under section 80-I was to be computed without deduction of relief under section 80HH in computation of gross profit for that purpose. On a reference:

Held that the Tribunal was justified in directing deduction under section 80-I without considering the deduction under section 80HH."

17. In the case of *CIT Vs S.B. Oil Industries Pvt. Ltd. 274 ITR 495*, their Lordships of Punjab and Haryana High Court followed the above referred decisions and held that the AO committed a grave illegality in reducing deduction allowed u/s 80HH while computing deduction u/s 80-I of the I.T.Act. The following question was under reference to the Hon'ble Punjab & Haryana High Court:-

"Whether on the facts and in the circumstances of the case and in view of the provisions of section 80HH(9), the Income Tax Appellate Tribunal is right in holding that the deduction under sections 80HH and 80-I are independent deductions and are to be allowed with reference to the gross total income? "

18. The legislature by Finance (No.2) Act 1998 w.e.f. April 1, 1999 introduced the following provision as sub-section (9) of section 80-IA:-

"Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc 80-IA(9) Where any amount of profits and gains of an 36[undertaking] or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year, deduction to-the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C.-Deductions in respect of certain incomes", and shall in no case exceed the profits and gains of such eligible business of 36[undertaking] or enterprise, as the case may be."

The provision has been made applicable to S.80IB by insertion of subsection 13 noted above.

19. The above provision seems to have been introduced after taking note of observations of their lordships in the case of J.P. Tobacco (P) Ltd. Vs CIT and other similar decisions noted above. The Madhya Pradesh High Court had held that "no such provision was made in so far as Section 80-IA was concerned." Courts have elaborately discussed that under sub-section (9) of Section 80HH and other provisions only priorities of deduction under different sections were fixed. In order to meet the lacuna pointed out by High Courts, the legislature added sub-section (9) in section 80-IA and a provision (sub-section 13) with a similar effect in Section 80-IB of the Act. It is therefore evident that there was change in the legislative policy. The mischief was sought to be removed. To the extent deduction allowed u/s 80-IA or for that matter in Section 80-IB was not to be allowed

under any other provision of the Chapter under the heading "C - Deductions in respect of certain incomes" (hereinafter deduction under 'C' chapter VI-A). In other words, deficiency in the provision pointed out by the Hon'ble High Court in the case of J.P. Tobacco Products Pvt. Ltd. and in other cases noted above was covered and a specific provision to the above effect was made. It is not in dispute that in the case of J.P. Tobacco Products Pvt. and other decisions, no question of consideration of provision (80-IA)(9) arose as these cases pertained to Asst. Years earlier than Asstt. Year 1999-2000. In the case S.C.M. Creations (supra), as noted above, ld. Representative of the parties did not bring to the notice of their lordships the change in the statutory provision. The case was decided on concession by ld. Representative of parties. Applicability of section 80-IA(9) or similar provision u/s 80-IB was not considered by the Hon'ble Court. The case pertained to an assessment year after 1.4.99, yet the pre-amended law was applied. This fact is quite evident from the decision quoted above and is not in dispute.

19.1 Legal position of such a decision, as a binding precedent is quite clear. In the case of *B.Bhama Rao vs Union Territory of Pondicherry AIR 1967 SC 1480*, their Lordships of Supreme Court stated as under:-

"It is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law. "

The above principles have been again applied in large number of cases by the Supreme Court and by various High Courts. For the sake of convenience, we can refer to the case of State of U.P. Vs Synthetics and Chemicals Ltd. (1991) 4 SCC 139.

19.2 Further, in the case of *CIT Vs Kelvinator India Ltd. 256 ITR 1,* the full Bench observed as under:-

"A decision as is well known, is an authority for the proposition that it decides and not what can logically be deduced therefrom. A point not raised nor argued at the Bar cannot be said to be the ratio of the decision."

20. The full Bench also observed as under:-

"It is a well settled principle of interpretation of statute that the entire statute should be read as a whole and the same has to be considered thereafter chapter by chapter and then section by section and ultimately word by word."
20.1 In the light of above settled proposition, it cannot be said that decision of Hon'ble Madras High Court is an authority for the proposition how provisions of section 80-IA(9) made applicable w.e.f. Asstt. Year 1999-2000 is to be applied. Effect and implementation of above provision was neither raised, nor examined nor decided by the Hon'ble Madras High Court. The later decision of Madras High Court in the case of *M/s General Optics*

(Asia) Ltd. Vs DCIT(A) decided on 27.12.08 has made our task easier. In the said case, similar question was raised and the Tribunal, after following the decision of Special Bench in the case of Rogini Garments, had allowed deduction u/s 80HHC after deducting relief allowed u/s 80-IA(9). Their lordships in the judgment noted provision of sub-section (9A) as also Circular of CBDT No. 772 and ultimately observed as under:-
"8. The decision in ACIT Vs M/s Rogini Garments of the Special Bench, which was followed by the Tribunal, relates to the period subsequent to the date when the Amendment came into effect. Therefore, the Tribunal erred in applying it to the assessment year 1998-99 when the Amendment had not yet come into effect

9. In these circumstances, the substantial question of law is answered in favour of the assessee, but restricting it only to the assessment year 1998-99. This clarification is necessary since the impugned order was passed for both assessment years 1998-99 and 1999-2000. Tax case (Appeal) is disposed of accordingly. No costs. Consequently, connect M.Ps. are closed. "

20.2 It is clear from above that application of restrictions as upheld by the Special Bench in the case of M/s Rogini Garments was held to be applicable from AY 1999-2000 onward. In the light of above discussion, we hold that decision of Hon'ble Madras High Court in the case of SCM Creation Vs ACIT did not impinge upon the ratio of Special Bench in the case of Rogini Garments (supra). It is accordingly held that benches of the Tribunal, which have taken a view contrary to the view of Rogini Garments did not correctly appreciate the legal position. The mere fact, that SLP against the decision in the case of J.P. Tobacco and other decisions noted above was not filed or was dismissed, does not improve the situation in favour of the assessee. None of the decisions of the Hon'ble High Courts and the Hon'ble Supreme Court are applicable here as provision of Section 80IA(9), with which we are concerned, was not relevant in those cases. For the aforesaid reasons, we hold that the special bench decision in the case of Rogini Garments Is fully applicable. In the light of above discussion and when comprehensive decision of the special bench is already available on record we are of the view that further discussion of the question is not necessary. However, to meet ends of justice, we would briefly comment on other submissions of the assessees and the interveners.

20.3 It was submitted that computation of deductions under both the provisions like Section 80-I & 80HHC is to be made independently and for this purpose, reference was made to Section 80AB of the I.T.Act. In other words, it was contended that deductions u/s 80-IA and Section 80HHC were to be computed independently and, thereafter, adjustments were called for only if total deduction exceeded 100% of the profits and gains of eligible business of undertaking or enterprise. If deduction under both the provisions computed independently did not exceed profits and gains of eligible business, there was no question of placing any restriction on the deduction permissible u/s 80HHC or any section in the same chapter under the heading "C". In this connection, reliance was placed on Circular of CBDT No. 772 dated 23.12.98 which has been noted earlier. Reliance was also placed on several other decisions noted above. It was contended that provisions of section 80AB and other provisions were not correctly appreciated by the special bench.

21. After careful consideration of rival submissions, we find that above arguments were considered and rejected in Rogini Garments for good reasons. We are not persuaded to take a view different from the one taken by the Special Bench. On consideration of provisions of Section 80-IA(9), we find that there are two restrictions in the statutory provision under consideration. These are :-

a) where an assessee is allowed deduction under this section (80-IA or 80-IB), deduction to the extent of such profit and gain shall not be allowed under any other provision of this chapter (Heading "C -Deduction in respect of certain incomes"), AND

b) deduction shall in no case exceed the profit and gain of the undertaking or hotel as the case may be.

22. The contention on behalf of the assessee and intervener is that total deductions under various sections should not exceed profits and gains of undertaking. We are unable to accept this contention. It is seen that CBDT Circular No. 772 clarified and only dealt with (b) above and did not deem it necessary to make reference to restriction (a). In order to accept the 22. The contention on behalf of the assessee and intervener is that total deductions under various sections should not exceed profits and gains of undertaking. We are unable to accept this contention. It is seen that CBDT Circular No. 772 clarified and only dealt with (b) above and did not deem it necessary to make reference to restriction (a). In order to accept the contention of the assessee, we would have to exclude portion of the provision covered by (a) and ignore the restriction placed therein. Why such course should be adopted when words used by the legislature, "claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions" are quite clear and unambiguous and are to be given effect to as rightly contended by the revenue. The profit or gains of industrial undertaking, which has already been allowed as a deduction u/s 80-IA, such profit (to the extent) cannot be taken into consideration for allowing deduction under any other provision of this Chapter 'C'. If profit which has already been allowed as a deduction is again taken into consideration for computing deduction under any other provision referred to above, then restriction (a) above is disregarded and ignored. It cannot be done without doing violence to the language of the provision. We see no justification for adopting a course prohibited by the legislature. It is not possible to ignore the restriction placed as (a) nor it is possible to accept that in Circular No. 772, there is a suggestion to ignore restriction (a) mentioned above. As per the settled law, courts and Tribunals must see the mandate of the legislature and give effect to it as rightly argued by the revenue. Therefore, restriction (a) above has to be respected and followed.

23. The statutory provision of Section 80AB, no doubt, provides that deduction under each section of Chapter VI-A is to be computed independently. But as laid down by the full bench decision of the Delhi High Court, not only the total scheme of the statute but scheme of every section is to be read and interpreted and every word given proper meaning. In several sections under Chapter VI-A, it is provided that if deduction is allowed under that Section, then no deduction under any other section under chapter VI-A would be allowed. Thus, where deduction under such specific section has been claimed

and allowed, there is no need to compute deduction permissible under other sections of Chapter VI-A. It would be a futile and useless exercise. Therefore, no question of computing deduction in above circumstances would arise and section 80AB would have no application. The Section provides no solution to the problem where deduction is to be computed under more than one section of Chapter VIA. It cannot follow that other sections providing modification or change in manner or mode of computation are to be ignored. There are several sections like Section 80HHA, 80HHA(5), 80HHA(6) providing manner of deductions or preferential treatment to one deduction over another when assessee is entitled to deduction under more than one section of Chapter VI-A. It is provided that effect shall first be given to a particular section. All the sections are to be read together harmoniously. The fact that section 80AB starts with a non-obstante clause does not make any difference as we see no conflict in various provisions. Restriction placed on double deduction of same eligible profit cannot be read as absurdity or conflict. Having regard to above provisions, putting ban on allowability of deduction under other sections, computation of deduction under those sections would serve no purpose. It can not follow from above that restriction of those sections are not to be given effect to as scheme in those sections is different from scheme of Section 80AB which starts with non-obstante clause "Notwithstanding anything....." Arguments advanced on behalf of the assessee, if accepted, would lead to complications not envisaged by the legislature. We find it difficult to accept them. Therefore, in a case where deduction u/s 80-IA has been allowed, then in the light of provisions of sub-section (9A), such profits and gains (to the extent) shall not be allowed under any other provision of the relevant Chapter, For example, if total profit of undertaking is Rs.100/- and 20% is allowed as a deduction u/s 80-IA or 80-IB, then for purposes of other provisions like Section 80HHC, on such 20% of profit, no deduction can be allowed. The deduction under other sections has to be computed after reducing such profit of 20%. In other words, it will be computed with reference to 80% of the profit. Such deduction cannot be governed by Section 80AB alone as it is a case in which deductions under more than one section of Chapter VIA is to be allowed. Adjustment of deductions under various sections is to be made. It is not a case where provision before making any deduction under Chapter VIA is applicable. Therefore, provision of Section 80-AB is of no assistance in resolving the problem in hand.

24. The ld. Counsel for the assessee further contended that where legislature intended to deduct the amount of deduction out of some other deduction, a different phraseology was used. Ld. Counsel referred to subsection (5) of Section 80HHB, sub-section (4) of Section 80HHBA and subsection (4) of 80-IE and submitted that in all these provisions, the legislature had specifically used "non-obstante" clause whereas no overriding effect has been given in section 80-IA or 80-IB. The difference in language clearly pointed out that the legislature did not intend that deduction allowed under above provisions should be deducted from relief permitted by other sections.

25. On careful consideration, we do not find any substance in above argument. It is a settled law that legislature adopts different ways and means in order to achieve its goal and there is no justification for insistence on identical language. What is required to be seen is the language employed, which, if clear and unambiguous, is to be given effect to.

We are not concerned here with other provision but on plain reading of sections involved, we clearly see the restrictions discussed above. The Special Bench in the case of Rogini Garments did not find any difficulty in understanding and interpreting sub-section (9) of Section 80-IA as words of the provision are plain, clear and unambiguous. On plain reading of the statutory provision, we entirely agree with the view expressed by the Special Bench in case of Rogini Garments.

26. It was contended that provision of section 80HHC was a special provision providing an incentive to exporters earning precious foreign exchange for the country whereas Sections 80-IA or 80-IB cover a totally different field. Therefore, reading of provision of Section 80-IA(9) in Section 80HHC would only lead to an apparent conflict. Such a conflict has to be avoided. It was further submitted that all statutory provisions should be read together and given a harmonious and reasonable construction to avoid contradictions. It was submitted that instead of literal interpretation, a liberal interpretation should be applied to avoid part of statute becoming meaningless or redundant. Reference was made to interpretation of statute by Justice G.P. Singh and to several other decisions of Supreme Court noted above.

27. On careful consideration of above submissions, we do not find any force in them. We agree that all the provisions should be read together and given a harmonious construction. All provisions are inter-related and cannot be read de hors one and other. The Special Bench in the case of Rogini Garments has held that the restriction imposed by sub-section (9) on account of 80-IA is to be read in all the provisions of Chapter VI-A and it is not possible to ignore the restriction that profit and gains claimed and allowed as exempt under sub-section (9), (to the extent allowed) can not be allowed under any other provision of chapter 'C'. Above construction in reading restriction in all relevant provisions under chapter 'C, in our opinion, is leading to no contradiction or absurdity and is reasonable. It is the legislative policy not to allow repeated deduction of same profit under sections of deductions in Chapter VI-A. We, therefore, see no conflict or contradiction in giving effect to the legislative mandate. Doing otherwise would, no doubt, be doing violence to the clear language. The argument is accordingly rejected.

28. Ld. Representative of the assessee and interveners also laid stress to notes of objects and reasons pertaining to introduction of sub-sections (9), & (13) in Section 80-IA, and 80-IB. Our attention was also drawn to Circular of CBDT No. 772 dated 23.12.1998 to emphasise that legislature only intended to limit deduction under all the provisions to 100% of eligible profit. In other words, the intention was to see that total amount of deduction under all the provisions of Chapter-VI should not exceed the eligible profit. It was not intended to impose restriction or deduct profit allowed under Section 80-IA /80-IB from deduction permissible u/s 80HHC. Decision relied upon for above provisions have already been noted above and considered in detail.

29. Having done so, we are unable to find any substance in the argument advanced on behalf of the taxpayers. The notes on objects and accompanying reasons are only an aid to construction. Such aid to construction is needed when literal reading of provision leads to ambiguous results or absurdity. Where language is clear and there is no ambiguity or

absurdity, notes on clauses need not be referred to. Therefore, on facts, we do not see any support for the assessee from notes on clauses of the Finance Act. As regards Circular No. 772 dated 23.12.1998, we have already held that the said Circular was dealing with restriction (b) which provided that deduction (under other provision with heading "C"), "shall in no case exceed profit and gains of business or hotel as the case may be". The above portion of the Section is separated from the other portion of the sub-Section by word 'and'. It is, therefore, clear that there are two restrictions in the sub-section and circular of the Board is dealing only with the second restriction. It is difficult to accept that circular was issued to do away with first restriction incorporated in the provisions. There is absolutely no justification for allowing repeated deductions on profit and gain on which deduction has been allowed u/s 80-IA or 80-IB of the Act. The Special Bench in the case of Rogini Garments rightly held that repeated deductions of same profit and gains of undertaking was not intended to be disallowed. Above conclusion, in our opinion, was rightly arrived at and is confirmed.

30. Shri Ajay Vohra counsel for the intervener in ITA No. 1537 to 1539/D/07, in ITA No. 4409/D/03 and ITA No. 1827/D/07 had submitted that there was no provision contained in Section 80HHC requiring deduction of amount of business profit allowed as deduction u/s 80-IA/80-IB. The amount on which deduction u/s 80HHC is to be allowed is prescribed in Explanation to Section 80HHC. He emphasized that purpose and object of inserting sub-section (9) of Section 80-IA was to restrict total deduction available under Chapter VI-A to the amount of total eligible profit of the business. He also placed certain illustration in his submissions to show how taxpayer should not be entitled to deduction of more than 100% of eligible profit.

31. Shri Vohra also drew our attention to difference in language used in sub-section 80HH(9A) and 80HHA(7) where the expression used is different and is, "no part of the consideration or of income shall qualify for deduction for any assessment year under any such other provision". He argued that above language clearly provided that deduction allowed u/s 80HH or 80HHA shall not qualify for deduction under any other provision of Chapter VI-A. The legislature deliberately used different language u/s 80-IA which clearly showed that purpose of Section 80-IA(9) not to deduct the deduction allowed but was to restrict overall deduction under Chapter VI-A to 100% of eligible profit of eligible undertaking or enterprise.

32. We have considered and discussed above submissions of Shri Vohra, but have not found any force in them. In our considered opinion, the language used in Section 80-IA(9)/80-IB(9A) is clear and unambiguous and is required to be given effect to. Deduction of profit and gains allowed u/s 80-IA/80-IB is not to be allowed again under any other provision. There is then further restriction on total deduction not exceeding eligible profit of the undertaking. No useful purpose would be served in repeating what we have observed above.

33. Shri Vohra then contended that Section 80HHC and 80-IA or 80-IB operate in different fields inasmuch as Section 80HHC is applicable only to all eligible units exporting goods or merchandise whereas Section 80-IA or 80-IB is applicable only to all

eligible units even if goods manufactured in those units are not exported, and in that event, the question of reducing deduction allowed u/s 80-IA or 80-IB would not arise. Shri Vohra had placed reliance on decision of Hon'ble Bombay High Court in the case of *Godrej Agrovet Ltd. Vs ACIT 290 ITR 252* As far as this limited issue is concerned, we are inclined to agree with the submission advanced by Shri Vohra. Restriction contained in Sections 80-IA or 80-IB not to allow repeated deductions are applicable to same profit. This is more than clear from use of word "such profit" in Section 80-IA/80-IB. In other words, there has to be identity of profits on which deduction under more than one provision under Chapter VI-A is claimed by the assessee. The provisions are applicable where on the profit of the undertaking or enterprise, deduction is claimed u/s 80-IA or 80-IB and then on the same profit of the undertaking, deduction under other provisions like 80HHC is claimed. In such cases, restriction contained in above provisions would apply. If profits are derived from separate undertaking, restriction contained in above provision would not be applicable.

34. Shri Vohra also relied upon decision of Supreme Court in the case of *Brittania Industries Ltd. Vs CIT 278 ITR 546* to contend that section 80-IA (9) can not control the mechanism of computing the deduction u/s 80HHC(3) of I.T.Act. He further submitted that where assessee was found that provision allowing deduction of assumption is applicable, then those provisions are to be interpreted liberally. Reliance was placed on decision of Supreme Court in the case of *P.R. Prabhakar Vs CIT 284 ITR 548*

35. We have already dealt with above contention. In our considered opinion, all statutory provisions are inter-related and are part of one scheme. This cannot be read de hors one and other. Restriction imposed in Section 80-IA(9)/80-IB(9A) are to be read in all sections and given effect to. This would only give harmonious reading. The decision of Supreme Court relied upon by Shri Vohra also support above proposition although they do not deal with Section 8.0-IA/80-IB of the Act. We are unable to find any substance in above argument of the learned counsel.

36. Shri Vohra, on the applicability of the decision of Hon'ble Madras High Court in the case of SCM Creations (supra), submitted that principle of sub-silencio rule could not be applied to the decision. The aforesaid decision of High Court being decision of a superior court has to be given preference over the decision of Rogini Garments (Special Bench). In support of this contention, it was submitted that even decision of non-jurisdictional High Court is to be given preference over the Special Bench decision. In this connection, reliance was placed on the decision of Madhya Pradesh High Court in the case of *National Textile Corporation Ltd. vs CIT (2208) 171 Taxman 339 (M.P.)* as also on the decision of Hon'ble Delhi High Court in the case of *All India Lakshmi Commercial Bank Officers Union vs. Union of India 150 ITR 1*. Shri Vohra also submitted that certain observations of the bench of ITAT in the case of Nodi Exports Vs ACIT, Moradabad, clearly exceeded its jurisdiction. After careful consideration of decision of Hon'ble Madras High Court in the case of SCM Creations(supra), we have already held that the said decision cannot be treated as a precedent. The issue has been discussed threadbare and those reasons need not be repeated again. Observations of Hon'ble Madras High Court in the later decision dated 20.12.08 in case of General Optics (Asia) Ltd. (supra)

has put the controversy beyond any shadow of doubt. In the above case, amendment brought w.e.f. 1.4.99 introducing Section 9 and (9A) in 80-IA and 80-IB respectively were clearly noticed. These amendments were not brought to the knowledge of the Hon'ble Court in the case of SCM Creations. Therefore, there is no question of supersession of Special Bench decision in the case of Rogini Garments. The said decision is applicable with full force. We do agree that correct propositions in the case Nodi Exports are overstated. There is no question of Tribunal not following and applying decision of superior court. The question involved here is whether decision of SCM Creations can be treated as a precedent. For the reasons already given, the said decision did not lay down that section 80-IA(9) or 809-IB(13) should be disregarded while computing deduction u/s 80HHC or other deduction under Chapter 'C' of VI-A.

37. We accordingly hold that deduction to be allowed under any other provision of Chapter VI-A with the heading 'C' is to be reduced by amount of deduction allowed u/s 80-IB/80-IA of the I.T. Act. We answer the question referred to the Special Bench in the affirmative i.e. in favour of the revenue.

38. We answer above question and refer the appeals and other grounds for disposal to the regular benches.

(Order pronounced in the open court on 23.06.2009.)