

Tax Alert | Delivering clarity

13 September 2019

Supporting manufacturer not at par with direct exporter for computation of benefit under section 80HHC

Deduction available to exporters u/s 80HHC(1) read with section 80HHC(3) is completely different from that of the supporting manufacturer's u/s 80HHC(1A) read with (3A). Hence supporting manufacturer cannot claim deduction for export incentives.

The Supreme Court in *M/s Carpet India* (Civil Appeal Nos.4591 to 4599, 4603 of 2018) *vide* order dated 27 August 2019, held that supporting manufacturers are not to be treated on par with the direct exporter for the purpose of computing deduction under Section 80HHC of the Act.

Facts of the case

- M/s Carpet India (the taxpayer) is a supporting manufacturer to IKEA Trading (India) Ltd. (Export House/Trading House). It earns profits from the manufacturing and sale of carpets to the Export House.
- "Profits of the business" has been defined in clause (baa) of the Explanation to Section 80HHC of the Act to mean profits of the business as reduced by, among others, ninety percent of export incentives covered by section 28(iia) to 28(iie) of the Act.
- In case of direct exporters, for computing deduction, the profits of business can be increased by 90 percent of the export incentives as provided in the proviso to section 80HHC(3) read with section 80HHC(1) subject to the conditions mentioned therein.
- However this benefit of increasing the profits of business by 90 percent of export incentives is not present in section 80HHC (3A) of the Act applicable to supporting manufacturer.
- The taxpayer received export incentives in the form of duty drawback. In the return of income, the export incentives were included in the profits for computing deduction under section 80HHC of the Act. The taxpayer contended that since it exports goods to foreign constituents through export houses it is entitled for the deduction as available to the direct exporter.
- The Assessing Officer computed deduction under section 80HHC (3A) and denied the addition of 90 percent of the export incentives.
- The Commissioner of Income Tax (Appeals) (CIT(A)) however held that the taxpayer can claim deduction for export incentives under section 80HHC, on par with the direct exporter. This was upheld by the Income Tax Appellate Tribunal (ITAT).
- The Punjab and Haryana High Court also decided the issue in favour of the taxpayer. It relied on the decision of Apex Court in the case of *CIT v. Baby Marine Exports*¹ which allowed inclusion of export house premium for supporting manufacture in profits of business for computing deduction under section 80HHC considering the same to be an integral part of sale price realized from export house.

¹ (2007) 4 SCC 555

Issue under consideration

Whether taxpayer being a supporting manufacturer who receives export incentives in the form of duty draw back (DDB), duty entitlement pass book (DEPB) etc. is entitled for deduction for section 80HHC of the Act at par with direct exporter.

Ruling of the Supreme Court (SC)

- The Apex Court held that direct exporter stands on a different footing than the supporting manufacturer for the purpose of computing deduction under section 80HHC of the Act. Explanation (baa) of section 80HHC defining 'profits of business' specifically reduces 90 percent of the export incentives.
- The parameters and scheme for claiming deduction relatable to direct exporters under 80HHC(1) read with 80HHC (3) is completely different from that of supporting manufacturers under section 80HHC (1A) read with section 80HHC(3A) thereof.
- The Apex Court further held that decision of Baby Marine Exports (supra) dealt with issue related to eligibility of export house premium, to be included in profits of business, which is different from the issue in the taxpayer's case.
- The Supreme Court overruled the decision of CIT v. Satish Kumar Gupta² (C.A. No. 6347/2012) decided on 12 September 2019 wherein the Apex Court allowed benefit of 90 percent of export incentives for computing deduction under section 80HHC in case of supporting manufacturer, by only relying on the Supreme Court decision of Baby Marine.
- Further, Supreme Court remanded these matters to the Appellate Tribunal to enable the taxpayer to avail deduction under section 80HHC(1) read with section 80HHC(3) in cases where they could prove they were direct exporters.

Our comments

The provisions of the Act did not contain language to allow supporting manufacturer benefit from deduction under section 80HHC of the Act on the export incentives. The Supreme Court decision has brought clarity to this issue and also overruled the judgment given by another co-ordinate bench in case of Sushil Kumar Gupta wherein such benefit was allowed to the supporting manufacturer.

² [2012] 25 taxmann.com 368/ special leave to appeal no. 7615/2009, civil appeal nos. 6347/2012



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2019 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited