2026 INSC 1018

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 143-144 OF 2013

ORIENT CRAFTS LIMITED ... APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX,
NEW DELHI. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 139-140 OF 2013

WITH

CIVIL APPEAL NO(S). 141-142 OF 2013

WITH

CIVIL APPEAL NO(S). 137-138 OF 2013

J U D G M E N T

S.V.N. BHATTI, J.

1. The Civil Appeals are at the instance of Orient Crafts Limited/Assessee and arise from the common Orders dated 01.06.2012 and 07.09.2012 in I.T.A. Nos. 993 of 2008 and the batch in the High Court of Delhi at New Delhi. The details of the Appeals are tabulated hereunder:

Assessment Year (AY)	Civil Appeal Nos.
2000-01	141-142/2013 & 137-138/2013
2001-02	139-140/2013 & 143-144/2013

2. The Assessee is a Public Limited Company incorporated under the Companies Act, 1956, engaged in manufacturing and exporting readymade garments from India. In the subject Appeals, as noted above, the dispute relates to the Assessment Years 2000-01 and 2001-02. The issue between the Assessee and the Revenue arises under Section 80HHC read with Sections 28(iiia) to (iiic) of the Income Tax Act, 1961 ("the Act, 1961"). However, the arguments have been confined to Section 263 of the Act, 1961. For convenience, we refer to the circumstances relating to A.Y. 2001-02.

3. The Assessee filed a Return on 31.10.2001 for AY 2001-02, declaring income of Rs.3,97,22,789/- (Rupees Three Crores Ninety-Seven Lakhs Twenty-Two Thousand Seven Hundred and Eighty-Nine). The Assessee claimed a deduction under Section 80HHC of the Act, 1961, amounting to Rs. 13,85,68,402/- (Rupees Thirteen Crores Eighty-Five Lakhs Sixty-Eight Thousand Four Hundred and Two). The audited Report under Section 80HHC(4) of the Act, 1961, filed by the Assessee, states that the Assessee received Rs. 73,49,341/- (Rupees Seventy-Three Lakhs Forty-Nine Thousand Three Hundred and Forty-One) as premium on the sale of export quota. The Assessee claims that the premium on the sale of export quota was included in the total turnover shown as local turnover and treated as "profits of business" computed under the head "Profits and gains of business or profession".

3.1 On 17.06.2003, the Assessing Officer ("AO") issued a Notice under Section 143(2) of the Act, 1961, accompanied by a questionnaire. By Order dated 13.08.2003, the AO completed the assessment under Section 143(3) of the Act, 1961. Accordingly, the Assessee contends that the claim for deduction under Section 80HHC has been duly examined and accepted by the AO. The Assessee relies on the CBDT Office Memorandum/Circular dated 23.02.1998 ("CBDT O.M."), which states that technically, export quota premium can be equated with the items mentioned in Section 28(iiia) and (iiic) of the Act, 1961, and therefore the premium on the sale of export quota statutorily receives the same treatment as profit on the sale of import license, cash assistance and duty drawback.

4. The C.I.T. (Delhi-V) issued a Notice under Section 263 of the Act, 1961, on 20.12.2004, calling upon the Assessee to show cause why the assessment dated 13.08.2003 should not be reopened and reassessed. According to the C.I.T., the Order dated 13.08.2003 was erroneous and prejudicial to the interest of the Revenue, as the AO failed to exclude 90% of the quota premium from business profits under Explanation (baa) to Section 80HHC, resulting in an excess deduction of Rs.51,23,151/- (Rupees Fifty One Lakh Twenty Three Thousand One Hundred Fifty One). The Revenue contends that the export quota premium receipt must be reduced by 90% under Explanation (baa) to Section 80HHC, as other receipts are not eligible, and that the Assessee is not entitled to a proportionate adjustment under the *proviso* to Section 80HHC(iii) of the Act, 1961. According to the Revenue, the reason in law appears to be that export quota is not explicitly enumerated in Section 28(iiia) to 28(iiic) of the Act, 1961. The Assessee replies to this objection by relying on the CBDT Office Memorandum (O.M.), which is binding on the Officers of the Department. On receipt of the reply dated 15.01.2005, the C.I.T., vide Order dated 01.02.2005, set aside the Order of Assessment dated 13.08.2003 and directed the AO to undertake a fresh assessment, treating the premium on quota sale proceeds as “other receipts” under Explanation (baa) to Section 80HHC of the Act, 1961.

5. On 24.02.2006, the AO passed a fresh Assessment Order, redetermining the taxable income at Rs.4,56,44,810/- (Rupees Four Crores Fifty-Six Lakhs Forty-Four Thousand Eight Hundred Ten), with ancillary and incidental levies. The Assessee carried the matter in Appeal before the C.I.T. Appeals-XVI, and on 31.07.2006, the Assessment Order dated 24.02.2006 was set aside. The Assessee, challenging the C.I.T. Order dated 01.02.2005, made under Section 263 of the Act, 1961, also initiated parallel proceedings by filing I.T.A. Nos. 2210-2211/Del/2005 for AYs 2000-01 and 2001-02 before the Income Tax Appellate Tribunal (ITAT). While matters stood thus, the Revenue filed I.T.A. Nos. 3204-3205/D/2006 before the ITAT, Delhi, challenging the Order dated 31.07.2006 of the C.I.T. On 07.09.2007, the ITAT allowed the Appeals in I.T.A. Nos. 2210-2211/Del/2005 filed by the Assessee, and on 15.10.2007, Appeals filed by the Revenue in I.T.A. Nos. 3204-3205/D/2006 were dismissed, in view of the Tribunal's decision in the connected Appeals.

6. The Revenue carried the matters on appeal under Section 260A of the Act, 1961, before the High Court of Delhi. By the impugned Judgment, the High Court set aside the Orders of ITAT dated 07.09.2007 and 15.10.2007. The gist of the consideration and conclusion in the impugned Judgment is summarised hereunder:

A. On Nature and Source of Receipt: Consideration received from the sale of export quota permits is not income "derived" from exports. The immediate and proximate source of the income is the domestic transaction with a third party in India to whom the permit was sold.

B. On the Non-Applicability of Sections 28 (iiia) to (iiie) of the Act, 1961: Quota permits are not issued under the Imports (Control) Order, 1955, so Section 28(iiia) is inapplicable. Further, Quota earnings are not cash assistance or duty drawback, so Sections 28(iiib) and 28(iiic) are inapplicable. Quotas are entirely distinct from Duty Entitlement Pass Book (DEPB) entitlements under Section 28(iiid) and Duty Free replenishment certificates (DFRC) under Section 28(iiie). Hence, Quota premium constitutes a general business benefit falling within the residuary ambit of Section 28(iv) of the Act, 1961.

C. On the Status and Limits of CBDT O.M.: The High Court rejected the Revenue's argument that the CBDT O.M. was not a Circular under Section 119 of the Act, 1961, and applied the Constitution Bench Judgment of this Court in *CCE, Bolpur v. Ratan Melting & Wire Industries*[1], holding that circulars contrary to statutory provisions have no existence in law and cannot prevail over judicial interpretation in pending matters before courts. The Revenue may challenge an erroneous interpretation before the appellate courts, notwithstanding any beneficial administrative circulars in favour of the Assessee.

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[1] (2008) 13 SCC 1.

D. On Construction of *Provisos* to Section 80HHC(3): The Circular, at best, permits treating quota profits as business profits exigible under Explanation (baa) to Section 80HHC of the Act, 1961, which accounts for the 90% exclusion. The first *proviso* to Section 80HHC(3) of the Act, 1961, strictly and specifically refers only to sums referred to in Sections 28(iiia), (iiib), and (iiic) of the Act, 1961. The *provisos* contain specific statutory compliance conditions, such as the third *proviso's* requirement that turnover exceed Rs. 10 crores, which export quota premiums cannot satisfy, either logically or practically. Because the *provisos* do not include residuary business income, the benefits thereunder cannot be extended by analogy to the CBDT O.M.

E. On Revisional Jurisdiction of C.I.T.: C.I.T. correctly exercised its powers under Section 263 because the AO failed to conduct basic inquiries or apply the statutory criteria for export incentives, thereby rendering the Order erroneous and prejudicial to the interests of the Revenue within the meaning of Section 263 of the Act, 1961.

7. Hence, the Civil Appeals at the instance of the Assessee.

8. Learned Senior Counsel, Mr. Salil Aggarwal, has primarily submitted that the High Court failed to consider the view taken by the ITAT in concluding that the C.I.T. had erroneously exercised jurisdiction under Section 263 of the Act, 1961. With considerable force, the learned Senior Counsel argued that, in the case at hand, the assessment was completed under Section 143(3) of the Act, 1961. The CBDT O.M. is binding on the AO. There is a distinction between the discretion available to the AO in obeying the CBDT O.M. and the discretion exercised by the Courts of Law. To that end, the learned Senior

Counsel submits that, in passing the Assessment Order dated 13.08.2003, the AO followed a binding Circular and gave due effect to the receipt of premium on quota sales under Section 80HHC of the Act, 1961. Under Section 263 of the Act, 1961, the C.I.T. exercises jurisdiction only if the requirements of Section 263 are satisfied, namely, that the case is erroneous and prejudicial to the Revenue. By a catena of decisions, it is well established that, on a conjoint reading of "erroneous" and "prejudicial to the Revenue," the C.I.T. has jurisdiction to reopen an Assessment. In the circumstances of the case, the exercise of jurisdiction under Section 263 of the Act, 1961 is illegal. The ITAT considered, in sufficient detail, the C.I.T.'s illegal exercise of revisional jurisdiction. In an Appeal filed under Section 260A of the Act, 1961 by the Revenue, the High Court reversed the findings of the Tribunal without sufficient reasoning. In the batch of Appeals, the learned Senior Counsel emphasised the unsuitable attempt by the Revenue to challenge the Order dated 01.02.2005 of C.I.T. under Section 263 of the Act, 1961 by relying on the decisions reported in *C.I.T., Ludhiana v. Max India Ltd*,[2] *C.I.T. v. Amitabh Bachhan*[3], *Malabar Industries Co. Ltd. v. CIT*[4] and *Ratan Melting (supra).*

9. Learned Senior Counsel, Mr. Arijit Prasad, argues that the AO has illegally applied or treated the entitlement under Section 80HHC of the Act, 1961. Section 80HHC is not read in conjunction with Sections 28(iiia) to (iiic) of the Act, 1961, but is read along with the applicable Explanation (baa) to Section 80HHC. In fact, there is a difference between the direct benefit on

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[2] (2007) 295 ITR 282 (SC)]
[3] (2016) 384 ITR 200 (SC).
[4] (2000) 243 ITR 83 (SC).

utilisation of export quota by a manufacturer and the receipt of premium on sale of quota. The Tribunal committed a serious error by relying on the CBDT O.M., as it runs inconsistent with the language of both the Sections. The learned Senior Counsel contends that the impugned Judgment cannot be assailed on the ground of being bereft of reasons, on the view taken by the Tribunal *vis-à-vis* the Order dated 01.02.2005 of the Commissioner under Section 263 of the Act, 1961. He relies on the very impugned Judgment and argues that, at this stage, this argument is unavailable and that there are no merits in the Appeal, and prays for dismissal of the same.

10. We have heard the learned Senior Counsel and perused the record.

11. The short point for decision is whether the exercise of jurisdiction by the C.I.T. under Section 263 of the Act, 1961, is justifiable and whether the impugned Judgment reversed the findings of the ITAT by recording its own view.

12. The jurisdiction of the Commissioner under Section 263 of the Act, 1961, is well-defined by a catena of decisions of this Court, and for continuity, we briefly summarise the same:

A. *C.I.T. v. Max Limited (supra)*: This Court examined the validity of a Commissioner's Revision Order passed under Section 263 of the Act, 1961. The power of revision under Section 263 requires that the phrase "prejudicial to the interest of the revenue" be read in conjunction with the expression "erroneous" order. Every loss of revenue resulting from a course adopted by an AO cannot automatically be treated as prejudicial to the interest of the

Revenue. Where two views are possible and the AO has taken one with which the Commissioner disagrees, the Order cannot be treated as an erroneous Order prejudicial to the interest of the revenue. The only exception is if the view taken by the AO is entirely unsustainable in law. The validity of a Commissioner's revision order must be evaluated based on the position of law exactly as it stood on the date the Order was passed. A subsequent statutory amendment, even if applied with retrospective effect, cannot be used to attract the provisions of Section 263 if the AO's original stance was inherently possible at the relevant time.

B. *C.I.T. v. Amitabh Bachhan (supra).* This Court held that Section 263 of the Act, 1961 requires the concurrent presence of two preconditions before revisional jurisdiction can be exercised. The Assessment Order passed by the primary Authority must be erroneous and prejudicial to the interests of the Revenue. Unlike the power to reopen an Assessment under Section 147, Section 263 does not require a prior Show-Cause Notice detailing the specific grounds for revision as a condition precedent. The statutory requirement of Section 263 is that the assessee must be afforded a reasonable opportunity of being heard, which is implicit in observing the Principles of Natural Justice. The Commissioner is not foreclosed from considering new issues and is not confined to the terms of the initial notice, provided the Assessee has a full opportunity to controvert the new facts and explain the circumstances before a final decision is made. No breach of natural justice occurs if the Commissioner records findings beyond the Show-Cause Notice, provided those findings are based on the existing assessment record and the Assessee had the opportunity to contest the basis during the revisional proceedings.

C. *Malabar Industries Co. (supra)*: This Court held that for the Commissioner to exercise *suo motu* jurisdiction under Section 263(1), two strict prerequisites must be met: the AO's Order must be "erroneous" and "prejudicial to the interests of the Revenue". Both conditions must co-exist; if an Order is erroneous but not prejudicial, or prejudicial but not erroneous, this provision is unavailable. The Commissioner cannot use this power to correct every minor mistake made by an AO. An Assessment Order becomes "erroneous" if it rests on an incorrect assumption of facts, misapplies the law, violates Principles of Natural Justice, or is passed without application of mind. The phrase "*Prejudicial to the Interests of the Revenue*" has wide import and is not confined solely to the loss of tax. However, if an AO's erroneous Order results in the Revenue losing tax that is lawfully payable, it is considered prejudicial to its interests.

13. Let us revert to the circumstances of the case. The impugned Judgment first considered the issue arising under Sections 28(iiia) to 28(iiie) of the Act, 1961. The summary of the view taken by the High Court is noted by us in the preceding paragraphs and is not reiterated for brevity. The High Court referred to the substantial questions on which the Appeal has been admitted, as stated. In the impugned Judgment, the High Court considered a question regarding the correctness of the ITAT's view on the Commissioner's decision under Section 263 of the Act. The High Court relied on the decision in *ITO v.*

D.G. Housing Projects Limited[5], dated 01.03.2012 and juxtaposed the view of the Commissioner and answered the issue in favour of the Revenue and against the Assessee.

14. The impugned Judgment has taken note of the binding nature of the CBDT O.M. for Revenue officers and of the limitations before a Court of Law. The consideration of the issue has proceeded on the expression in the CBDT Circular, namely, "*technically, export quota premium can be equated with the items mentioned in Section 28(iiia) (profit on sale of import licenses) section 28(iiic) (duty drawback)*". The fiction created by this expression has not been approved by the High Court in interpreting the applicable Sections. The view taken on all the relevant issues is available and tenable.

15. For the limited purpose of assessing whether the impugned Judgment completely ignored the Tribunal's view on the C.I.T.'s decision under Section 263 of the Act, 1961, we have examined the C.I.T.'s Order, the ITAT's Order, and the impugned Judgment. We are of the view that, in considering the scope and ambit of Section 263 of the Act, 1961, the High Court noted the fact in issue between the Assessee and the Revenue and then recorded a finding that the C.I.T. had rightly exercised the revisional jurisdiction under Section 263 of the Act, 1961. We are not inclined to interfere with the impugned Judgment and are not keen to remand the matter to the High Court for reconsideration,

[5] ITA No. 179 of 2011.

particularly after appreciating the nature of the disputes between the Assessee and the Revenue. The Appeals fail and are dismissed.

16. The accompanying Appeals, being identical and for the same reasons, are dismissed accordingly.

17. Pending application(s), if any, stand disposed of accordingly. No costs.

…………………………J.
[S.V.N. BHATTI]

…………………………J.
[N. V. ANJARIA]

New Delhi;
September 18, 2026.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11063 OF 2017

M/S SAMTEX FASHIONS LTD. ... APPELLANT(S)

VERSUS

COMMISSIONER OF INCOME TAX,
NEW DELHI. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO. 12449 OF 2017

J U D G M E N T

S.V.N. BHATTI, J.

CIVIL APPEAL NOS. 11063 AND 12449 OF 2017

1. The Assessee is the Appellant in both the Appeals. The Civil Appeals arise from the Order dated 23.05.2017 in ITA No. 32 of 2005 and ITA No. 1057 of 2008, passed by the High Court of Delhi at New Delhi. The controversy in the subject Appeals pertains to the Returns filed by the Assessee for the Assessment Years ("A.Y.") 2000-2001 and 2001-2002. The Appeals have been tagged and heard with Civil Appeal Nos. 143-144 of 2013 and the batch. For convenience, and noting the distinguishing considerations between the clubbed matters, we find it convenient to pronounce separate Judgments in the bunch of Appeals heard together. To complete the narrative, we observe that in Civil Appeal Nos. 143-144 of 2013 and batch, though the substantive issue between the Revenue and the Assessee is under Sections 28(iiia) to 28(iiie) and 80HHC (Deduction in respect of profits retained for export business) of the Income Tax Act, 1961 ("The Act, 1961"), the arguments in Civil Appeal Nos. 143-144 of 2013 and batch have been advanced on the exercise of power by the C.I.T. under Section 263 of the Act, 1961. Further, the impugned judgments refer to and rely upon the decision of the Delhi High Court in *CIT v. Nagesh Knitwears P. Ltd.*[1]*, which* considered and decided issues arising under both Section 80HHC and Section 263 of the Act, 1961. Vide a separate judgment of the even date in Civil Appeal Nos. 143-144 of 2014 and batch, we affirm the view taken in *Nagesh Knitwears P. Ltd. (supra)* on the exercise of power by the C.I.T. under Section 263 of the Act, 1961. Therefore, the issue raised by the Assessee under Sections 28(iiia) to 28(iiie) and 80HHC of the Act, 1961, in these Appeals is examined by the present Judgment.

<u>THE CIVIL APPEAL NO. 11063 OF 2017</u>

2. The circumstances set out in Civil Appeal No. 11063 of 2017 are referred to and relied upon for convenience and to dispose of both Appeals.

3. On 21.10.2001, the Assessee filed the Return for AY 2001-02. The Assessee declared Rs. 90,43,061/- (Ninety Lakhs Forty-Three Thousand and Sixty-One) towards proceeds from the sale of export quota and Rs. 16,72,286/- (Sixteen Lakhs Seventy-Two Thousand Two Hundred and Eighty-Six) towards interest earned on the margin money deposit. The Assessee claimed a deduction under Section 80HHC of the Act, 1961. The Assessing

[1] (2012) 345 ITR 135.

Officer (Assistant Commissioner of Income Tax, Central Circle-6, New Delhi) ("AO") under Section 143(3) of the Act, 1961, on 24.03.2004, rejected the claim under Section 80HHC of the Act, 1961, and assessed the total taxable income of the Assessee at Rs. 1,07,15,350/- (One Crore Seven Lakh Fifteen Thousand Three Hundred and Fifty). The AO recorded the reasons for rejecting the deduction of both the sums claimed by the Assessee, and the reasoning of the AO is summarised as follows: -

A. On Sale of Export Quota: Section 10A of the Act, 1961 applies strictly to profits and gains "derived by" an industrial undertaking from the export of articles or things. The export quota entitlements were granted under the Garment Export Entitlement Policy, based on past export performance. Monetising such quotas by selling them to third parties did not constitute export activity of the industrial undertaking. While relying on this Court's Judgment in *CIT v. Sterling Foods*[2], it held that quota sale income had only an incidental, commercial connection rather than a direct nexus with the industrial undertaking. It rejected the assessee's alternative computation under Section 10A(4) of the Act, 1961, noting that because the Assessee exported 100% of its manufactured goods and had no domestic sales, the statutory proportional formula did not apply.

B. On Interest earned on Margin Money: The interest earned on fixed deposits pledged with banks to secure credit facilities had no direct nexus to the undertaking's manufacturing and export activities. It reclassified the interest receipts as "Income from Other Sources" under Section 56 rather than

[2] (1999) 237 ITR 579.

as business profits under Section 28, relying on *CIT v. Pandyan Chemicals Ltd.*[3], *North East Gases Pvt. Ltd. v. CIT*[4], and *CIT v. Paras Oil Extraction Ltd.*[5]

4. The Assessee, assailing the Order dated 24.03.2004, filed Appeal No. 174/2004-05 before the C.I.T. (Appeals)-III ("the CIT(A)"). On 13.02.2006, the CIT(A) allowed the Assessee's Appeal, holding that quota-sale proceeds are deductible under Section 80HHC of the Act, 1961, and that interest on margin money is exempt under Section 10A of the Act, 1961, and allowed both claims in full. The findings of the CIT(A) are as follows:

A. On Sale of Export Quota: The CIT(A) relied on the CBDT Instruction/Office Memorandum dated 23.02.1998 ("CBDT O.M."), which provided that the premium on the transfer of export quotas is equated with export incentives under Sections 28(iiia), (iiib), and (iiic), i.e., profits on the sale of import licences, cash assistance, and duty drawback of the Act, 1961. Where income is considered for exemption under Section 10A, then it is eligible for deduction under Section 80HHC because Section 10A(4)(iii) omits Section 80HHC from the list of prohibited Chapter VI-A deductions under the Act, 1961. Reliance is placed on *CIT v. Mahalaxmi Textile Mills Ltd.*[6] and *CIT v. P. Surendra Prabhu*[7] to hold that an Assessee is entitled to relief under an alternative eligible provision if denied under another. The ruling in *IPCA Laboratory Ltd. v. DCIT*[8] was superseded by the Taxation Laws (Amendment) Act, 2005 ("Act 55 of 2005") with retrospective effect from 01.04.1992,

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[3] (1998) 233 ITR 497.
[4] (1996) 220 ITR 372.
[5] (1998) 230 ITR 266.
[6] (1967) 66 ITR 710.
[7] (2005) 279 ITR 402.
[8] (2004) 266 ITR 521.

permitting 90% incentive additions even where business profits resulted in a loss. Because the Assessee's entire turnover was export turnover, the full quota amount of Rs. 90,43,061/- was deductible under Section 80HHC, and the addition was deleted.

B. On Interest on Margin Money: The ITAT's decision in the Assessee's own case for AY 2000–01 (ITA No. 4803/Del/03) was followed to endorse the principle that placing fixed deposits was a mandatory condition precedent imposed by the lending bank to provide operational credit facilities for running the export unit. The fixed deposits were merely the "foster mother" of the interest income, whereas the "real mother" was the industrial undertaking itself. Hence, the interest income has a direct nexus with the industrial undertaking and qualifies for exemption under Section 10A of the Act, 1961. Accordingly, the addition of Rs. 16,72,286/- made by the AO is reversed.

5. The Revenue filed ITA Nos. 1625-1627/DEL/2006, and on 15.05.2007, the said Appeals filed by the Revenue were dismissed. The Tribunal's view is stated as follows: -

A. On Sale of Export Quota: The Tribunal affirmed the CIT(A)'s finding that the sale of export quota is analogous to the sale of import licences and is accorded identical statutory treatment under Section 28 read with Section 80HHC of the Act, 1961. It upheld the view that the retrospective amendment by Act 55 of 2005 entitled the Assessee to deductions under Section 80HHC of the Act, 1961 in respect of export incentives.

B. On Interest on Margin Money: Following its own precedent in the Assessee's case for AY 2000–01, the Tribunal affirmed the CIT(A)'s finding that interest earned on margin money deposits had a direct operational nexus with the business of the industrial undertaking. Accordingly, it upheld the Assessee's alternate eligibility to claim a deduction under Section 80HHC and dismissed the Revenue's Appeal.

6. Under Section 260A of the Act, 1961, the Revenue filed ITA No. 1057 of 2008 before the High Court of Delhi. The Appeal was admitted on the following substantial questions of law: -

> *"Whether ITAT was correct in law in deleting the addition made by the Assessing Officer by disallowing Assessee's claim under Section 10A of the Act out of income earned on sale of export/import quota holding that the assessee was alternatively entitled to deduction under Section 80HHC of the Act?*
> *Whether ITAT was correct in law in deleting the addition made by the Assessing Officer by disallowing Assessee's claim under Section 10A of the Act on interest on margin money by holding that the assessee was alternatively entitled to deduction under Section 80HHC of the Act?"*

7. The impugned Judgment, referring to the decisions in *CIT v. Nagesh Knitwears P. Ltd.(supra), CIT v. M/s Mereena Creations*[9] and *CIT v. Shri Ram Honda Power Equip*[10], answered the questions in favour of the Revenue and against the Assessee.

8. Hence, the Civil Appeals.

9. Mr. Santosh Krishnan, learned Counsel for the Assessee, argues that the Assessee's case has been rejected by reference to *Nagesh Knitwears P. Ltd. (supra).* Therefore, the Assessee must assail the reasoning in *Nagesh Knitwears P. Ltd. (supra)* to substantiate the deductions claimed under

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[9] (2011) 330 ITR 199.
[10] (2007) 289 ITR 475.

Section 80HHC of the Act, 1961. The arguments are confined to the deduction claimed under Section 80HHC, amounting to Rs.90,43,061/-.

9.1 The CBDT O.M. provides that a quota sale is treated as profit on the sale of an import licence, cash assistance, and duty drawback, as per the items in Section 28(iiia), (iiib), and (iiic) of the Act, 1961. The export quota the Assessee received from the Apparels Export Promotion Council ("AEPC") is transferable. The Assessee transferred the available surplus quota and realised a premium. By operation of the CBDT O.M., the premium is treated as eligible for deduction under Section 80HHC of the Act, 1961, in accordance with the description in Section 28(iiia) to (iiic). The CBDT O.M. is clothed with Section 119 of the Act, 1961, and binds the Department. A reading of *Nagesh Knitwears P. Ltd. (supra)* does not show that the CBDT O.M. deviates from or violates any provisions of the Act, 1961. The CIT(A) and ITAT have appreciated the binding nature of the CBDT O.M. and have properly allowed a deduction under Section 80HHC of the Act, 1961, in favour of the Assessee.

9.2 The learned Counsel, by referring to the expression in the CBDT O.M. dated 23.02.1998, argues that the premium is treated as export earnings because it falls within Section 28(1) of the Act, 1961, namely profit on the sale of a licence under Section 28(iiia); cash assistance against exports under Section 28(iiib); and duty drawback under Section 28(iiic). The decisions in *KP Varghese v. ITO*[11]*, Vijay Krishnaswami v. DDIT*[12]*,* and *State of TN & Anr. v. India Cements Ltd. & Anr.*[13] are relied upon to support the proposition that

[11] (1981) 4 SCC 173.
[12] 2025 SCC Online SC 1843.
[13] (2011) 13 SCC 247.

statutory Circulars, instructions, and guidelines are binding on the Revenue Department and its subordinate Officers in administering and executing tax Statutes. The Revenue cannot repudiate, challenge, or take a stance contrary to its own valid Circulars. The Department cannot, by arguing that a Departmental Circular is inconsistent with the Statute or deviates from its strict terms, assail the Orders of the CIT(A) and ITAT. The Circulars bind the executive and adjudicating Authorities; they do not bind the courts in interpreting statutory provisions, nor can they impose on taxpayers a burden greater than what the Statute itself envisages.

10. Arijit Prasad, learned Senior Counsel for the Revenue, argues that the Claim is substantially based on the CBDT O.M. The binding nature of the CBDT O.M. on the Courts of law is no longer *res integra*. The relied-upon Judgment has considered the scope and application of Sections 28(iiia) to (iiic) and 80HHC of the Act, 1961. The findings in the relied-upon Judgment are not open to challenge and strictly follow the literal construction of the relevant provisions. The Act, 1961 deals with total income derived, as per the Act, 1961, and tax payable thereon. The Appellant's argument runs counter to the basic scheme for deriving or determining the Assessee's total taxable income.

11. It is apposite to refer to the findings of the relied-upon Judgment by the High Court as follows:

A. In classifying the consideration earned from the transfer of export quota rights, it was held that such receipts do not fall within any clause of Sections 28(iiia) to (iiie) of the Act, 1961. Quota permits allocated by the AEPC are not import licences issued under the Imports (Control) Order, 1955, thereby excluding Section 28(iiia). Nor do they constitute Government cash compensatory support under Section 28(iiib), customs/excise duty drawback under Section 28(iiic), or DEPB/DFRC duty remission credits under Sections 28(iiid) and (iiie). Instead, the export quotas allocated by the AEPC represent a general commercial right, and the premium realised on their domestic transfer to a third party constitutes an incidental business advantage, falling residually under Section 28(iv) as a benefit arising from the exercise of business.

B. This residual classification disentitles the Assessee from claiming the deduction under the First *Proviso* to Section 80HHC(3) of the Act, 1961. Because quota premium falls under Section 28(iv), it would be covered as an "other receipt of a similar nature" under Explanation (baa), thereby subjecting it to a 90% reduction from the business profit base. However, because Section 28(iv) is not included in the First *Proviso* to Section 80HHC(3), no corresponding addition back to export profit will occur.

C. The Assessee sought to overcome this statutory barrier by relying on CBDT O.M., which stated that quota premiums technically equate to Section 28(iiia) and (iiic) items and should "statutorily receive the same treatment". The High Court rejected this argument by referring to the Constitution Bench decision in *Ratan Melting & Wire Industries*[14], which held that administrative Circulars cannot override statutory text or tie the hands of a Court interpreting the law.

12. We have heard the parties and perused the record.

[14] CCE, Bolpur v. Ratan Melting & Wire Industries, (2008) 13 SCC 1.

13. The controversy falls within a very narrow compass, and further consideration of the availability of deductions under Section 80HHC of the Act, 1961 would depend on the meaning the Court would attach to the CBDT O.M. for technically equating it with Sections 28(iiia) to 28(iiic) of the Act, 1961. This Court, in *Ratan Melting & Wire Industries (supra),* laid down the following principles on the scope and binding nature of the CBDT circulars:

A. Departmental Circulars and instructions issued by the Central Board of Excise and Customs (CBEC) are binding on the subordinate Authorities functioning under the respective Statutes. However, once the Supreme Court or a High Court declares the law on a question arising for consideration, it is impermissible for any Court or Tribunal to direct that the Executive Circular be given effect in preference to the view expressed by the Constitutional Court.

B. Administrative Circulars and clarifications issued by the Central or State Governments merely reflect the Executive's understanding of statutory provisions. Such Circulars are not binding on the courts. Under the constitutional framework, only the Judiciary can interpret statutory provisions. The Executive does not have this power.

C. Any Administrative Circular or clarification that runs contrary to statutory provisions or to the judicial declaration thereof has no force in the eyes of the law.

D. Accepting the contention that the Revenue is precluded from challenging an interpretation contrary to its Circulars would extinguish the Revenue's valuable right of appeal. Because an assessee who benefits from a Circular will not appeal, precluding the Revenue from appealing would prevent the High Courts and the Supreme Court from ever adjudicating the question. Such an outcome would directly undermine the law declared by the Supreme Court and compromise its binding force under Article 141 of the Constitution of India.

14. The CBDT O.M. is not binding on the Courts. The Assessee's argument, for the reasons given in *Nagesh Knitwears P. Ltd. (supra),* does not merit further consideration in the subject Appeals. A Constitution Bench of this Court in *Ratan Melting & Wire Industries (supra)* held that Circulars issued by the CBDT bind only the Administrative Departmental Authorities. They merely represent the Executive's understanding of a statutory provision and are never binding on the High Courts or the Supreme Court. When the High Court or Supreme Court interprets a statutory provision, a conflicting Administrative Circular has no legal existence before the Court. If a circular were binding on courts, the judiciary would have to follow an Administrative Memo even when it directly violates a Parliament enactment. Further, if the Revenue were permanently barred by its own Circular from questioning a legal interpretation in Court, the Department could never appeal an erroneous Tribunal decision. Since an assessee benefiting from a circular would never appeal, the true statutory meaning could never be adjudicated by the High Courts or the Supreme Court.

15. The CBDT O.M. is binding on Revenue Officers. The assessee can challenge it before the Court. The Revenue has availed of this remedy and has succeeded before the High Court. If accepted, the Assessee's argument would effectively enforce the CBDT Circular, which is otherwise not in line with the

Act, 1961 and the precedents of this Court. In essence, the CBDT O.M. creates a legal fiction by equating the export quota premium with the items mentioned in Section 28(iiia) to (iiic) of the Act, 1961. The application of a legal fiction contrary to the explicit statutory position is impermissible in law. Further, the scope for limiting legal fiction is well established in tax matters. Revenue from the sale of a quota generates horizontal revenue for the assessee but does not earn foreign exchange. The requisite for any of the revenues covered by Section 28(iiia) to (iiic) of the Act, 1961 is not present in the sale of the quota. Therefore, on a plain reading of Section 28, the sale of quota cannot be treated as business income.

16. Let us apply the same interpretative tool/standard to Sections 28(iiia) to 28(iiic) of the Act, 1961 and appreciate their meaning and scope. The result would be that the CBDT O.M. cannot come anywhere near the transactions covered by Sections 28(iiia) to 28(iiic) of the Act, 1961. It is difficult to equate something as "business income" unless the basic traits of the transaction, namely receipt of foreign exchange, etc., are satisfied.

17. Through a legal fiction, the CBDT circular has equated premium from quota sales with income under Sections 28(iiia), (iiib) and (iiic) of the Act, 1961. In *Nagesh Knitwears P. Ltd. (supra),* Hon'ble Mr. Justice Sanjiv Khanna, as he then was, speaking for the Bench, explained that the incidence of premium cannot be equated with the incomes covered by Sections 28(iiia) to (iiie) of the Act, 1961. The reason is legally tenable and hence does not warrant further examination.

18. Lastly, if a Court were compelled to treat an administrative CBDT Circular as binding on itself, it would undermine the entire constitutional and statutory framework governing income tax liability, including the standard of "income derived," the strict construction of legitimate deductions, and the classification of permissible expenses.

19. In effect, the argument of the Assessee calls upon this Court to give effect to the CBDT O.M. We reject this argument. No other argument is canvassed. For the above reasons, we see no reason to interfere with the impugned Judgment. The Appeal fails and is dismissed accordingly.

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20. For the reasons discussed above, the Appeal fails and is dismissed.

21. Pending application(s), if any, shall be disposed of accordingly.

…………………………….J.
[S.V.N. BHATTI]

…………………………….J.
[N. V. ANJARIA]

New Delhi;
September 18, 2026.