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C.A.No. 4478 OF 2001
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4478 OF 2001@@
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Commnr. of Income Tax ...Appellant

Vs.

Silver & Arts Palace ...Respondent

ORDER@@
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The appeal is directed against the judgment of the Jaipur Bench of the Rajasthan High Court dismissing the appeal under Sec.260-A of the Income Tax Act (for short, 'the Act') carried by the Revenue against the order of the Income Tax Tribunal dismissing its appeal.

Sec. 80 HHC of the Act permits certain deductions to be made from the profits earned out of the business of export of goods. There is, however, an explanation (aa) added thereto, which reads as under:

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"export out of India" shall not include any transaction by way of sale or otherwise, in a shop, emporium or any other establishment situate in India, not involving clearance at any customs station as defined in the Customs Act, 1962 (52 of 1961)."

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In order to explain what is to be treated as "export out of India", any transaction by way of sale or

otherwise in a shop or emporium which does not involve clearance that in customs shop as defined in Customs Act 1962 is statutorily excluded from the expression "export out of India".

The assessee runs the business of sale of semi-precious and precious stones, handicrafts, jewellery etc. In the return filed for Assessment year 1996-97 it had declared a total income of Rs.1,51,000/- and claimed deduction of Rs.80,12,786/- under Sec.80-HHC of the Act. The Assessing Officer found that the sales effected by the assessee included counter sales of Rs.9,76,40,672/- and, therefore, the deduction claimed by the assessee under

Sec.80 HHC was disallowed by the Assessing Officer by placing reliance on Explanation (aa) to Section 80HHC(4A) of the Act. The assessee's appeal to the Commissioner of Income Tax (Appeals) failed but its appeal to the Tribunal succeeded. Before the Tribunal voluminous material was placed on record to show that the Allahabad High Court had specifically considered the effect of introduction of Explanation (aa) to Sec.80 HHC(4A) of the Act and had taken the view in Ram Babu and Sons and another (222 ITR 606)@@

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that this Explanation means that for the purpose of this section, there will be no export out of India if two contentions are specified that (a) it is a transaction by

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way of sale or otherwise in a shop, emporium or establishment situate in India and that it should not involve any clearance in any customs shops as defined in Customs Act. This view of the Allahabad High Court had been consistently followed by several other High Courts, including the Rajasthan High Court in Income Tax Officer@@

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vs. Vaibhav Textiles 258 ITR 346. It was also pointed out@@

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to the Tribunal that a number of orders of the Income Tax Tribunal following the view taken was consistently applied as the law laid down therein. In fact, the record show that even for the goods of the respondent-assessee for the previous assessment years, the Tribunal had taken the same view and the Revenue attempted to canvass against the view by seeking re-assessment under Secs. 256(1) and 252 of the Act but both attempts failed. There was no further challenge to the settled consistent judicial view taken by the issue. It was also pointed out that the judgment of the Allahabad High Court in Ram Babu (Supra) had been@@

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challenged by the Revenue before this Court but the special leave petition, was summarily dismissed. In view of this position the Tribunal failed to maintain the consistency of the judicial decision which should be respected and followed.

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There is no dispute between the parties that the transaction of counter sales effected by the respondent had customs clearance as explained within the meaning of Explanation (aa) to Sec.80HHC(4A) of the Act and further that the sales were of inconvertible foreign exchange.

In these circumstances we are of the view that the Revenue having accepted and consistently followed the position of law settled by Ram Babu (Supra) particularly in@@

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the case of assessee itself, there is no merit in this appeal. We, therefore, dismiss the appeal without any order as to costs.

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.....J.
(RUMA PAL)

