# Commissioner of Income Tax Vs Jaswand Sons

## Income Tax A. No. 91 of 2010

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 29, 2010

**Acts Referred:**
Income Tax Act, 1961 â€" Section 260A, 80IB

**Citation:** (2010) 328 ITR 442

**Hon'ble Judges:** Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

**Bench:** Division Bench

**Advocate:** Denesh Goyal, for the Appellant; Pankaj Jain, for the Respondent

**Final Decision:** Allowed

## Judgement

Adarsh Kumar Goel, J.
This appeal has been preferred by the Revenue u/s 260A of the Income Tax Act, 1961 (in short ""the Act"") against

the order of the Income Tax Appellate Tribunal, Chandigarh Bench ""A"", Chandigarh (hereinafter referred to as ""the Tribunal"") passed in I.T.A.

No. 622/CHANDI/2008 dated February 27, 2009 for the assessment year 2005-06, proposing following substantial questions of law:

1. Whether on the facts and circumstances of the case, the hon''ble Income Tax Appellate Tribunal was right in holding that the Commissioner of

Income Tax (Appeals) was justified in deduction u/s 80IB of the Income Tax Act, 1961 on a sum of Rs. 2,30,85,177 received by Assessee from

export house as DEPB considering it to be a part of sales made by the Assessee ?

2. Whether on the facts and circumstances of the case the hon''ble Income Tax Appellate Tribunal erred in not holding the DEPB of Rs.

2,30,85,117 received from the export house as not derived from the industrial undertaking eligible for deduction u/s 80IB of the Income Tax Act,

1961 ?

3. Whether on the facts and circumstances of the case the hon''ble Income Tax Appellate Tribunal has erred in law in not holding the DEPB

benefits do not form part of the net profits of eligible industrial undertaking for the purpose of Section 80IB ?

4. Whether on the facts and circumstances of the case the hon''ble Income Tax Appellate Tribunal has erred in not following the decision of the

hon''ble Punjab and Haryana High Court in the case of Liberty India Vs. Commissioner of Income Tax, which has been upheld by the hon''ble

Supreme Court ?

2. The assessee is a manufacturer and exporter of hosiery goods. During the assessment, a claim for deduction u/s 80IB was made in respect of

income derived from sale of export incentives. The said claim was rejected as not falling u/s 80IB not being income derived from industrial

undertaking. On appeal, the Commissioner of Income Tax (Appeals) upheld the plea of the Assessee on the ground that part of sales of the

Assessee were to an export house. The said view has been affirmed by the Tribunal.

3. We have heard learned Counsel for the parties.

4. Learned Counsel for the Revenue submits that the Tribunal erred in allowing the claim u/s 80IB only on the ground that part of sales of the

Assessee were to an export house which has no relevance to the question of deduction u/s 80IB. The income derived from export incentive was

not eligible for deduction u/s 80IB, not being income derived from the industrial undertaking as held by the hon''ble Supreme Court in

Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, and this Court in Liberty India Vs. Commissioner of Income Tax, .

5. The same view has been taken by this Court in the cases of the Assessee in I.T.A. No. 301 of 2007 Jaswand Sons v. CIT decided on

September 17, 2007 and Jaswand Sons v. CIT (2010) 326 ITR 39 (P and H).

6. In view of the above, the questions raised by the Revenue have to be decided in its favour.

7. Accordingly, the appeal is allowed.