

(2006) 10 P&amp;H CK 0113

## High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Nahar Spg. Mills Ltd.

RESPONDENT

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**Date of Decision:** Oct. 27, 2006**Acts Referred:**

- Income Tax Act, 1961 - Section 143(2), 80HHC

**Hon'ble Judges:** Rajesh Bindal, J; Adarsh Kumar Goel, J**Bench:** Division Bench

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**Judgement**

1. Following questions have been referred for opinion of this court by the Income-Lax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 11-4-1996 in ITA No. 1385/Chd./1994, for the assessment year 1992-93:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that prima facie adjustment made u/s 143(1)(a) is not permitted by law, when on the face of the statement of accounts, it was clearly a wrong claim of the assessee?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that income from non-trade investment forms part of profit from business or profession for the purpose of deduction u/s 80HHC?

2. The assessee filed its return for the assessment year 1992-93 on 31-12-1992, claiming deduction u/s 80HHC of the Income Tax Act, 1961 (for short, "the Act"). On 11-3-1994, the assessee filed revised return reducing claim u/s 80HHC of the Act. The assessing officer issued notice dated 17-12-1993 u/s 143(2) of the Act and, thereafter, sent intimation u/s 143(1)(a) of the Act on 11-1-1994 before filing of the revised return, treating non-trading investment as income from other sources, creating demand for additional tax. The assessee made an application u/s 154 of the Act for rectification, which was rejected and appeal of the assessee was dismissed

by the Commissioner (Appeals). The Tribunal, however, accepted the plea of the assessee and held that having issued notice u/s 143(2) of the Act, intimation u/s 143(1)(a) of the Act was not permissible.

3. Learned Counsel for the revenue submitted that the view taken by the Tribunal is contrary to law but in support of his arguments, no provision or judgment has been cited.

4. Learned Counsel for the assessee, on the other hand, submits that the view taken by the Tribunal is in accordance with the view taken by the Hon"ble Supreme Court in [Commissioner of Income Tax Vs. Gujarat Electricity Board](#), .

5. We have considered the submissions advanced on behalf of the parties and perused the finding recorded by the Tribunal and the judgment of the Hon"ble Supreme Court in Gujarat Electricity Boards case (supra).

6. We find that the view taken by the Tribunal is in accordance with the judgment of the Hon"ble Supreme Court in Gujarat Electricity Board"s case (supra).

Accordingly, the questions referred are answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.