

**(2006) 12 MAD CK 0035**

**Madras High Court**

**Case No:** T.C. (A) . No. 2690 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Chemical Specialities India P. Ltd.

RESPONDENT

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**Date of Decision:** Dec. 22, 2006

**Hon'ble Judges:** P.P.S. Janarthana Raja, J; P.D. Dinakaran, J

**Bench:** Division Bench

**Advocate:** J. Narayananswamy, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

P.D. Dinakaran, J.

The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal in I.T.A.No. 693/Mds/2003 dated 7.7.2006.

2. The revenue is the appellant. The above appeal relates to the assessment year 1997-98. While completing the re-assessment, the assessing officer, holding that the assessee's commutation of deduction u/s 80 HHC was not based on profit from business as per the consolidated Profit and Loss Account from all the business, but based on the export profit of the export unit vide separate P & L Account filed with respect to the export division, re-calculated the benefit after including the turnover relating to the business of the industrial paints, trading in chemicals, manufacturing and export of leather garments in the total turnover. Aggrieved by the said order of assessment, the assessee filed appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal, against which, the Revenue went on appeal before the Tribunal and the Tribunal also confirmed the order of the Commissioner and dismissed the appeal filed by the Revenue.

3. Hence, The present appeal by the Revenue raising the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal was right in excluding the turnover relating to the business of manufacturing of industrial paints

and trading in chemicals from the total turnover while computing the deduction u/s 80 HHC when the assessee had filed a consolidated Profit and Loss Account in respect of the above mentioned business and the export business?

4. Mr. J. Narayanaswamy, learned standing counsel appearing for the Revenue, fairly submits that the issue raised in the above question is squarely covered against the Revenue by the decision of this Court in Commissioner of Income Tax v. Madras Motors Ltd./M.M. Forgings Ltd. , wherein this Court held as follows:

... the thrust of the opening clause of clause (b) of Sub-section (3) of Section 80HHC of the Act, has a stress on the words "does not consist exclusively of the export". The words "total turnover of the business" would be controlled by and have to be read in the colour of the opening clause. The sub-section has been created only to see the ratio of the income out of the export to the total income out of the business in respect of those goods because of the obvious difficulty of segregating the profits earned out of export alone. The total turnover of the business would contemplate only the business regarding such goods part of which are exported and the others are not so exported. Hence, it is impermissible to apply the section even to goods which are outside the limits of Clause (a) of Sub-section (2)

...

the turnover from the business of sale of motorcycles, motorcycle spare parts and television sets could not be included in the total turnover of the assessee for the purposes of the computation of special deduction u/s 80HHC. The Tribunal was right in holding that the total turnover in Section 80HHC was only the turnover relating to export business of the assessee and not the turnover relating to other business of the assessee.

In view of the above settled proposition, we find no question of law much less a substantial question of law that arises for our consideration. Accordingly, the tax case appeal is dismissed.