IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION
(INCOME TAX)
ORIGINAL SIDE

Present **:**

THE HON'BLE CHIEF JUSTICE THOTTATHIL B. RADHAKRISHNAN

AND

THE HON'BLE JUSTICE ARIJIT BANERJEE

ITA 32 OF 2003

ISPAT PROJECTS LTD.

Versus

C. I. T., W. B.-I, KOLKATA

For the Appellant	**:**	Mr. J.P. Khaitan, Sr. Advocate Ms. Swapna Das, Advocate Mr. Agnibesh Sengupta, Advocate Mr. Siddharth Das, Advocate
For the Respondent	**:**	Mr. Debasish Chowdhury, Advocate
Heard on	**:**	24.12.2019
Judgment on	**:**	**15.05.2020**

Arijit Banerjee, J. :

1) This Income Tax Appeal is directed against an order dated 26th November, 2002 passed by the Income Tax Appellate Tribunal, 'E' Bench, Calcutta, dismissing the assessee's appeal preferred against the order of Commissioner of Income Tax (Appeal) (In short 'CIT') dated 25th November,

1999 for the assessment year 1996-97. By the said order, the CIT had dismissed the assessee's appeal against the Assessment Order dated 26th March, 1999 passed by the Joint Commissioner of Income Tax, Special Range - 7, Calcutta, for the assessment year 1996-97.

2) A coordinate Bench of this Court by its order dated 25th July, 2003, admitted the instant appeal for being heard on the following substantial questions of law:-

a) Whether extra realization made in rupees for export sale proceeds in foreign exchange due to adverse exchange rate of rupee would be part of the export turnover in the year of receipt?

b) Whether export sale proceeds received in accordance with and in terms of the contract and with the approval of Reserve Bank of India could be ignored for the purpose of relief under Section 80-HHC of the Act?

3) The undisputed facts of this case are that during the financial year 1992-1993, the appellant/assessee received an order from P.T. Ispat Indo, an Indonesian company for export of transformers, switch gears, conveyor rolls, etc. for a total CIF value of USD 29,40,000. The terms of payment by the Indonesian company to the assesse was that an advance payment of 10 per cent of the total value would be made (which came to Rs. 84,81,600/-) and balance 90 per cent would be paid in twelve (12) equal half yearly instalments commencing two years from the mean date of shipment. The Reserve Bank of India (in short "RBI") granted approval in respect of such export on deferred payment terms. The assessee obtained finance from Allahabad Bank against

the outstanding dues of 90 per cent of the contract value. Allahabad Bank was in turn refinanced by Export-Import Bank of India.

4) At the time when the assessee raised the export invoice for USD 29,40,400 the exchange rate was Rs. 28.849 to the dollar. Accordingly, the assessee entered in its books of accounts the Indian rupee equivalent of Rs. 8,48,16,060/-.

5) The Indonesian company paid the 10 per cent advance and, thereafter, two half yearly installments on or about 20th December, 1994 and 3rd July, 1995. Subsequently, the foreign customer wanted to pay off the balance amount at one go. The RBI permitted the Allahabad Bank to accept the balance amount in one installment.

6) As on the dates when the two half yearly installments and then the entire balance amount were paid by the Indonesian company, dollar was dearer vis-à-vis Indian rupee compared to what it was as on the date of raising of invoice by the assessee. Due to such exchange rate fluctuations, Allahabad Bank received an excess sum in Indian rupee amounting to Rs. 1,13,77,292/-. This amount was passed on by Allahabad Bank to the assessee during the previous year relevant to the assessment year 1996-97. The assessee treated the said amount as part of its export turn over for the purpose of computing deduction under Section 80-HHC of the Income Tax Act (In short 'the said Act'), for the assessment year 1996-97.

7) On 15th March, 1999 the assessee filed an application under sub-section (2) (a) of Section 80-HHC of the said Act before the Commissioner of Income

Tax, West Bengal, requesting for permission in terms of the said provision to enable the assessee to claim the said amount of Rs. 1,13,77,292/- as export turn over for the assessment years 1993-94 and 1994-95 as an alternative to the said amount being treated as export turnover for the assessment year 1996-97. Before any decision was given on such application, the Assessing Officer, on 26th March, 1999, completed assessment for the year 1996-97. The Assessing Officer rejected the assessee's claim for deduction under Section 80-HHC of the said Act by treating the said amount of Rs. 1,13,77,292/- as export turn over. He treated the said sum as business income of the assessee.

8) The first appeal from the Assessing Officer's order was dismissed by the CIT. The second appeal from the order of the CIT was dismissed by the learned Tribunal. Hence, this appeal under Section 260A of the said Act.

9) Before we proceed further, it may be helpful to note the relevant portions of Section 80-HHC of the said Act. Sub-section 1 of Section 80-HHC of the said Act in so far as the same is material for our purpose, provides as follows:

> "(1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [a deduction to the extent of profits, referred to in

sub-section (1-B),] derived by the assessee from the export of such goods or merchandise:"

10) Clause (a) of sub-section (2) of Section 80-HHC the said Act was amended by the Finance Act, 1999 with effect from June 1, 1999. Prior to such amendment, the said clause read as under:

"(2)(a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are received in, or brought into, India by the assessee (other than the supporting manufacturer) in convertible foreign exchange, within a period of six months from the end of the previous year or, where the Chief Commissioner or Commissioner is satisfied (for reasons to be rocorded in writing) that the assessee is, for reasons beyond his control, unable to do so within the said period of six months, within such further period as the Chief Commissioner or Commissioner may allow in this behalf."

11) After amendment, clause (a) of sub-section (2) reads as under:

"(2)(a) This section applies to all goods or merchandise, other than those specified in clause (b), if the sale proceeds of such goods or merchandise exported out of India are received in, or brought into, India by the assessee (other than the supporting manufacturer in convertible foreign

> exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.
>
> Explanation.- For the purposes of this clause, the expression "competent authority" means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange."

12) Clause (b) of the Explanation to Section 80–HHC defines 'export turnover' as follows:

> "(b) "export turnover" means the sale proceeds [received in, or brought into, India] by the assessee in convertible foreign exchange [in accordance with clause (a) of sub-section (2)] of any goods or merchandise to which this section applies and which are exported out of India, but does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962)"

13) The Assessing Officer was of the opinion that the sum of Rs. 1,13,77,292/- cannot be treated as export turnover as defined in Explanation (b) to Section 80-HHC read with sub-section (2)(a) thereof. In his view, after receipt of the full amount from Allahabad Bank in Indian rupees in respect of the export to the Indonesian importer, the matter relating to that

particular export came to an end and any income arising thereafter which could not be anticipated earlier, cannot be treated as income from such export or related to such export sale. Being of such view, he held that any application for permission from the Commissioner of Income Tax/Chief Commissioner of Income Tax with retrospective effect cannot revalidate and/or legitimise the assessee's claim. The Assessing Officer also rejected the alternative submission of the assessee that the amount in question should be treated as export turnover for the years of export *viz.* assessment years 1993-94 and 1994-95. He held that if the amount did not qualify as export turnover in one year, it could not be treated as export turnover in any other year since the statutory provisions were the same.

14) On appeal, the Commissioner of Income Tax (Appeals) held that the assessee cannot claim relief under Section 80-HHC in the assessment year 1996-97 because the goods in question were not exported during the previous year relevant to the said assessment year. He observed that the sale proceeds had to be brought into India within a period of six months from the end of the previous year in which export took place. He held that the question of bringing in foreign exchange within the extended period did not arise because the export was concluded not during the previous year 1995-96 relevant to the assessment year 1996-97 but in an earlier year by, i.e., January, 1994. With regard to the assessee's alternative case for treatment of the said receipt as export turnover for the assessment years 1993-94 and 1994-95, the Commissioner of Income Tax (Appeals) held that the money was brought into

India long after the end of the previous year relevant to the assessment year 1994-95 and such belated receipt had not been authorised by the Commissioner/Chief Commissioner. Accordingly, the CIT dismissed the appeal.

15) On further appeal by the assessee, the learned Tribunal upheld the finding of the CIT that the assessee cannot avail of relief under Section 80-HHC because the goods were not exported during the previous year relevant to the assessment year 1996-97. The Tribunal agreed with the CIT that the question of bringing in foreign exchange within the extended period did not arise because the export was concluded not during the previous year 1995-96 relevant to the assessment year 1996-97 but in an earlier year, i.e., by January, 1994. The Tribunal also rejected the alternative contention of the assessee that the amount in question should be treated as export turnover for the years of export *viz.* assessment years 1993-94 and 1994-95, by observing that if the amount did not clarify as export turnover in one year, it could not be treated as export turnover in any other year since the conditions remained the same in all the years.

16) Appearing for the appellant/assessee, Mr. J.P. Khaitan, learned Senior Advocate submitted that the time frame specified in sub-section (2)(a) of Section 80-HHC for receiving in India or bringing into India the foreign exchange could be extended by the Commissioner/Chief Commissioner prior to June 1, 1999 if sufficient reason was shown by the assessee for not being able to bring into India the sale proceeds within the stipulated time period. From June 1, 1999, the Authority which was vested with the power to extend such

time period was the RBI or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange. Learned Counsel submitted that it is indisputable that the sum of Rs. 1,13,77,292/- was realised in respect of exports completed by January, 1994. The Assessing Officer has himself noted that the assessee had made the exports during the financial years 1992-93 and 1993-94 on deferred payment terms with the permission of the RBI. According to the payment terms that RBI approved, a substantial part of the sale proceeds was to be received after the expiry of six months from the end of the previous year of export. However, with the subsequent permission of RBI, the sale proceeds were brought into India much earlier than the time provided in the original payment terms.

17) Mr. Khaitan then submitted that it cannot be disputed that the sum of Rs. 1,13,77,292/- is part and parcel of sale proceeds received in India by the assessee in convertible foreign exchange. The assessee had raised its invoice in US dollars and what it received from the foreign customer was the same amount of dollars as billed by it. To show the export in its books of accounts, the assessee converted the dollars into Indian rupees at the exchange rate prevalent at the time of export. By the time the sale proceeds were realised, the exchange rate went up and consequently, the same amount of US dollars yielded a larger amount in Indian currency. The assessee could know about such higher differential amount only when it actually received the sale proceeds. Before such receipt, the assessee could not have known or accounted for it in its books of accounts.

18) It was further submitted that the character of such export sale proceeds cannot become different because the corresponding exports were made in an earlier year. Export turnover by definition includes export sale proceeds of goods received in or brought into India in accordance with clause (a) of sub-section (2) of section 80-HHC of the said Act. According to sub-section (2)(a), such sale proceeds can be received after the close of the year of export within six months or even thereafter. Hence, the factum of receipt of the sale proceeds after six months of the year of export or longer cannot constitute any ground to exclude such proceeds from the purview of Section 80-HHC. In support of his submission that the said sum of Rs. 1,13,77,292/- is part and parcel of the assessee's export turnover irrespective of the year of realisation, Mr. Khaitan relied on the following decisions:

a) "(2011) 330 ITR 57 (Cal), Raghunath Exports (P) Ltd. v. Commissioner of Income – Tax
b) (2006) 282 ITR 144 (Guj), Commissioner of Income-Tax v. Amba Impex
c) (2010) 362 ITR 455 (Bom), Commissioner of Income-Tax v. Amber Exports (India)"

19) Learned Senior Counsel finally submitted that the authorities below excluded the sum of Rs. 1,13,77,292/- from export turnover on the ground that the export was made not during the previous year 1995-96 relevant to the assessment year 1996-97 and not on the ground that the assessee did not have permission for bringing in the sale proceeds after the expiry of six months from the end of the previous year of expiry. The fact that the assessee had made an

application before the Commissioner for such permission is noted in the order of the Tribunal. Such application of the assessee was not dealt with by the Commissioner till the date of the Tribunal's decision, i.e., March 15, 1999 nor thereafter till June 1, 1999. As such, in view of the amendment in the law, the assessee applied to the RBI for permission. When RBI also did not act upon the assessee's application, the assessee moved this court by way of WP No. 668 of 2005. Pursuant to the direction of this Court, the RBI dealt with the assessee's application and by an order dated June 11, 2005 held that no further extension was required by the assessee since RBI had approved the original deferred payment terms as well as the subsequent preponement of payment of balance in lumpsum. Mr. Khaitan submitted that if this court is of the view that the aspect of permission needs to be gone into, such aspet may be remanded to the Tribunal for examination and decision after taking into consideration subsequent developments.

20) Appearing for the Department, Mr. Debasish Chowdhury, learned Advocate defended the decisions of the authorities below. He submitted that in order to come under the category of export turnover, a transaction has to pass through the tests laid down under the provisions of Section 80-HHC of the said Act. All the conditions mentioned in the said section are required to be fulfilled. Partial compliance of the conditions will not be sufficient for a particular receipt to be eligible to be treated as export turnover. In the present case, all the conditions have not been fulfilled. If the conditions are not fulfilled for one

assessment year, the receipt in question cannot qualify as export turnover in another year as the conditions remain the same in both the years.

21) Learned Counsel submitted that the assessee received the entire balance amount from Allahabad Bank in Indian currency. Once the amount receivable in connection with a transaction is received in full satisfaction, the issue relating to the said transaction stands closed. Any income arising thereafter, which neither resulted from the agreement nor could be anticipated, could not be treated as income from the said transaction. He further submitted that the fact that the income in question could not be visualised earlier shows that it is an income not from the export transaction in question.

22) Mr. Chowdhury further submitted that hypothetically speaking, if Allahabad Bank had made payment to the assessee in dollars, the assessee would have got the same amount in Indian rupees as it received in this case as the amount would have remained the same after conversion. If the bank thereafter received dollar payment from the foreign party and there was fluctuation in the exchange rate, the profit resulting from such fluctuation would have been income of the bank and in that case, the income could not be said to have been related to the exports made by the assessee, although, the income was generated out of the same exports. He submitted that the reason for giving this example is to emphasize the fact that after receipt of the full amount by the assessee in respect of the export in question, the matter relating to that particular export stood closed and any income arising thereafter could not reopen the issue of that export. The income arising after such receipt

would, therefore, be income of the business and could not, by any stretch of imagination, be said to be part of the export turnover.

23) As regards the decisions relied upon by learned Counsel for the appellant, Mr. Chowdhury, learned Advocate, submitted that the said decisions are not applicable in the instant case as the same are distinguishable on facts. Every case depends on its own facts. Even a slightest change in the factual scenario alters the entire conspectus of the matter and makes one case distinguishable from another.

Court's View:

24) We have given our anxious consideration to the rival contentions of the parties. Two questions arise for determination. Firstly, whether or not extra realization in terms of rupees for export sale due to adverse exchange rate of rupee would form part of export turnover of the assessee? Secondly, if the answer to the first question is in the affirmative, whether the benefit contemplated under Section 80-HHC of the said Act could be denied to the assessee?

25) It is not in dispute that the appellant exported goods to the Indonesian purchaser. Such export was completed by January, 1994. The payment that was to be made by the foreign purchaser was agreed to be in installments. This arrangement had the sanction of the RBI. The payment terms contemplated payment in a staggered manner during a period of time which was much beyond six months from the date of export or from the end of the previous year. The appellant received the rupees equivalent of the invoice amount which was

in US dollars, from Allahabad Bank. In other words, Allahabad Bank financed the export undertaken by the appellant. Allahabad Bank was in turn refinanced by the Export-Import Bank. The foreign purchaser paid the first two installments on the agreed dates. On those dates, US dollar was dearer vis-à-vis Indian rupee which resulted in excess realization in terms of Indian rupee. This surplus was made over by Allahabad Bank to the appellant. The balance consideration amount for the export was paid by the foreign purchaser at one go after RBI granted permission to Allahabad Bank to receive the balance at one go. As on the date of payment of the entire balance amount by the foreign purchaser to Allahabad Bank, the exchange rate had undergone considerable change and Indian rupee had fallen substantially vis-à-vis US dollar. This again resulted in excess realization in terms of India rupees. The surplus was made over by Allahabad Bank to the appellant.

26) It cannot possibly be disputed that the inflow of foreign exchange in question into India resulted from the export that the appellant made. This excess realization is inextricably linked to the export made by the assessee. Had the export not been made, the foreign exchange would not have come into India and no question of realization or excess realization in terms of Indian rupees would have arisen. Hence, in principle, such excess realization should be treated as part of the export turnover of the assessee. In this connection, it may be noted that a coordinate Bench of this Court, in the case of Raghunath Export (P) Ltd. v. Commissioner of Income-Tax *supra* held as follows:

"We have considered the contentions of the learned advocates for the parties and checked the records. It is not disputed that tea was exported and payment was received in foreign currency and it is also admitted that when realization of the export was made there has been fluctuation of foreign currency, as such, there was a surplus realization in terms of Indian currency. The question is whether the aforesaid surplus realization of Rs. 10,61,326 can be treated to be a part of export turnover or not. In our view, going by the definition of the export turnover, the aforesaid amount was realized in connection with the export followed by payment of the price by the foreign buyer. Unless there has been an export the aforesaid surplus would not have been realized. Hence, this surplus realization is certainly relatable to the export. Therefore, we hold that this is an export turnover.

Here, the payment was made in foreign currency, not in terms of the Indian currency. According to us, consideration of export turnover has to be considered in the context of mode of payment being made by foreign buyers, not in the mode of convertible exchange.

However, the Legislature in its wisdom has cleared that in case of convertible foreign exchange, a time limit of six months has been prescribed. Therefore, this aspect cannot be ignored. Factually, neither the Commissioner of Income-tax (Appeals) nor the Tribunal have gone into the question whether the export turnover was realized beyond six months or not. Hence, we do not think that this question should be decided by us as no such point has been formulated by this court, nor any cross-appeal has been filed in this case. We are of the view that this amount received in a year or subsequent year by virtue of exchange rate difference cannot be said to be unrelatable to the export made. The same view has also been taken by the Gujarat High Court in the case of *Amba Impex* [2006] 282 ITR 144 and it has been held almost on the identical fact that "As a corollary, by the time such sale proceeds are received within the prescribed time, by virtue of exchange rate difference there might be a situation where larger amount is received than the amount as reflected in the shipping bill. Hence, merely because an amount is received in a year subsequent to the year of export by way of exchange rate difference, it does not necessarily always follow that the same is not relatable to the exports made."

27) In coming to the aforesaid decision, the Division Bench referred to and followed the decision of the Gujarat High Court in the case of Commissioner of Income-Tax v. Amba Impex *supra.* In that case, the Gujarat High Court held as follows:

> "Under sub-section (2) of section 80HHC of the Act, sale proceeds of goods or merchandise exported out of India and received in convertible foreign exchange become entitled to the deduction subject to fulfilment of other requisite conditions. Clause (a) of sub-section (2) of section 80HHC of the Act provides that such sale proceeds have to be received in convertible foreign exchange within a period of six months from the end of the previous year or, within such further priod as the competent authority may allow in this behalf. Thus, a plain reading of the provision makes it clear that once the competent authority has extended the time, in a case where it is necessary, or, where the sale proceeds have been received within a period of six months from the end of the previous year, such sale proceeds are directly relatable to the exports made and no further inquiry is necessary. Therefore, the entire controversy as to whether such receipt amounts to "any other receipt" stipulated in *Explanation (baa)(1)* need not be taken up for consideration. Once the Legislature has provided for treating a receipt

> within a period of six months after the end of the previous year, or within further extended period, as sale proceeds relatable exports, it would not be open to the Revenue to raise such controversy. The Legislature in its wisdom has taken into consideration the fact that in the case of exports made, sale proceeds are not necessarily realisable immediately within the accounting period in which exports have been made. As a corollary, by the time such sale proceeds are received within the prescribed time, by virtue of exchange rate difference, there might be a situation where a larger amount is received than the amount as reflected in the shipping bill. Hence, merely because an amount is received in a year subsequent to the year of export by way of exchange rate difference, it does not necessarily always follow that the same is not relatable to the exports made."

28) The decision of the Gujarat High Court in Amba Impex was followed by a Division Bench of the Bombay High Court in Commissioner of Income-Tax v. Amber Exports (India) *supra.*

29) However, going by the definition of "export turnover" in the said Act, before an amount received by an exporter can be treated as part of the export turnover, it must also be shown that the convertible foreign exchange was received in or brought into India within a period of six months from the end of

the previous year or within such extended period as the Chief Commissioner/Commissioner (now RBI) may allow. In the present case, it is not in dispute that the foreign exchange was received in India beyond the period of six months stipulated in sub-section (2)(a) of Section 80-HHC. However, this was in accordance with the permission granted by the RBI. Prior to completion of the assessment of the appellant for the assessment year 1996-97, the appellant had made an application before the Commissioner of Income Tax, West Bengal – I, requesting for permission to enable the appellant to claim the amount of excess realization due to exchange rate fluctuation as export turnover. It is also not in dispute that such application of the appellant was not disposed of by the Commissioner at any point of time. The view of the Assessing Officer was that after receiving the full amount from Allahabad Bank in Indian rupees, the chapter stood closed and any subsequent income which could not be visualized at the time of export cannot be said to be related to that particular export. This view was upheld both by the CIT and the learned Tribunal. We are unable to agree with this view. It was not possible for the appellant to know as on the date of export as to the manner in which exchange rate may fluctuate in future. The subsequent excess realization in Indian rupees due to adverse exchange rate of rupee cannot be said to be unrelatable to the particular export. Afterall, the object of incorporating Section 80-HHC in the said Act is clearly to grant incentive to the exporters who earn valuable foreign exchange for our country. The exemption contemplated under the said section for the purpose of calculating total income, is obviously to encourage

exports resulting in flow of foreign exchange into the country. Such a piece of legislation, in our opinion, must be interpreted as liberally as possible in favour of the exporter/assessee. It is trite law that if a particular taxing provision is liable to two interpretations, one favouring the assessee and the other favouring the department, the former interpretation ought to be accepted. The CIT and the learned Tribunal rejected the assessee's claim on the basis that export was concluded not during the previous year 1995-96 relevant to the assessment year 1996-97 and, therefore, the question of bringing in foreign exchange within the extended period did not arise. We are unable to agree with this view. On a meaningful reading of the relevant provisions of the said Act, we are of the opinion that income arising from export taking place not necessarily in the previous year relevant to the assessment year but also exports taking place in earlier years could qualify for deduction under Section 80-HHC provided of course the foreign exchange came into India within the time period specified in the statute. In the present case, the Commissioner never dealt with the appellant's application for extension of time period so as to enable the appellant to treat the receipt in question as part of its export turnover.

30) It was submitted on behalf of the appellant that in view of amendment of clause (a) of sub-section (2) of Section 80-HHC and in view of the RBI becoming the competent authority with effect from June 1, 1999 for the purpose of allowing/disallowing extension of time to bring in the foreign exchange, the appellant made an application to the RBI. By an order dated 11th June, 2005,

the RBI has held that no further extension is required as the RBI had approved the original deferred payment terms as well as the subsequent preponement of payment in lumpsum. However, copy of such order has not been brought on record.

31) On an overall consideration of the facts and circumstances of the case, we are of the view that extra realization made in rupees for export sale proceeds in foreign exchange due to adverse exchange rate of rupee would be part of the export turnover in the year of receipt subject to the foreign exchange coming into the country within the statutorily prescribed time period. We are also of the view that export sale proceeds received in accordance with and in terms of the export contract and with approval of RBI could not be ignored for the purpose of relief under Section 80-HHC of the said Act. The questions of law on which the instant appeal was admitted are answered accordingly.

32) We have already recorded our opinion that the grounds on which the CIT and the learned Tribunal rejected the appellant's claim are not tenable in law. With regard to the appellant's alternative contention for treatment of the amount in question as export turnover for the assessment year 1993-94 and 1994-95, both the CIT and the learned Tribunal held that the receipt was brought into India long after the end of the previous year relevant to the assessment year 1994-95 and such belated receipt had not been authorized by the Commissioner/Chief Commissioner. The fact remains that the appellant's application before the Commissioner was never taken up for consideration and disposal.

33) In the aforesaid factual matrix, in our opinion, ends of justice will be served if the matter is remanded to the learned Tribunal for fresh consideration taking into account the subsequent development including the order of the RBI stated to have been passed on June 11, 2005 and also in light of the observations made in this judgment.

34) In the result, the appeal succeeds. The order under appeal is set aside. The matter is remanded to the learned Tribunal for fresh consideration and decision after giving opportunity of hearing to both sides. Needless to say, both sides will be at liberty to file further documents before the learned Tribunal as they may be advised. Since this is a fairly old matter, it is desirable that the learned Tribunal gives some precedence to this matter and decides the matter as early as the business of the learned Tribunal may permit.

35) ITA 32 of 2003 is accordingly disposed of.

36) Urgent Xerox certified copy of the order be supplied to the parties upon completion of all formalities.

(Arijit Banerjee, J.) **(Thottathil B. Radhakrishnan, C.J.)**