SUPREME COURT OF INDIA

Bench: Justices B.V. Nagarathna and S.V.N. Bhatti

Date of Decision: 21st November 2023

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2664 OF 2011

CIVIL APPEAL NO. 2665 OF 2011

Shah Originals …APPELLANT(S)

VERSUS

Commissioner of Income Tax-24, Mumbai …RESPONDENT(S)

Legislation:

Income Tax Act, 1961 (Sections 80HHC, 260(A), 28 to 44)

Foreign Exchange Regulation Act, 1973 (FERA) (Section 8, sub-section (3) to Section 73)

Subject: Appeals challenging High Court's decision on disallowance of deduction under Section 80HHC of the Income Tax Act for gains from foreign exchange fluctuations in Export Earners' Foreign Currency (EEFC) account.

Headnotes:

Income Tax – Gains from Foreign Exchange Fluctuations – Non-inclusion under Section 80HHC Deduction – Gains from foreign exchange fluctuations in EEFC account not considered as income derived from export business – EEFC account gains not directly related to the business of export of goods, hence cannot be included in deduction under Section 80HHC of Income Tax Act. [Paras 2, 6, 6.2, 7, 7.1, 7.2, 10, 12, 13]

Foreign Exchange Earnings – EEFC Account – Nature and Purpose – EEFC account recognized as an enabling facility for exporters under FERA, not a mandatory requirement for export business – Gains from EEFC account seen as independent of export activity, falling outside the scope of Section 80HHC deduction. [Paras 5, 7, 7.1]

Interpretation of 'Derived from' in Income Tax Act – Strict interpretation of the term 'derived from' in the context of Section 80HHC – Income to be considered under this section must have a direct nexus with the export of goods and not just attributable to it. [Paras 10, 10.1, 10.3, 10.4, 10.5, 12, 12.1, 12.2]

Decision – Appeals of Shah Originals dismissed – Judgment of High Court upheld, disallowing deduction under Section 80HHC for gains from foreign exchange fluctuations in EEFC account. [Para 14]

Referred Cases:

- Sutlej Cotton Mills Ltd. v. Commissioner of Income Tax, Calcutta (1978) 4 SCC 358.
- Commissioner of Income Tax, Delhi v. Woodward Governor India Pvt. Ltd . (2009) 13 SCC 1
- Commissioner of Income Tax and Anr. v. Motorola India Electronics (P) Ltd. (2013) SCC OnLine Kar 10731
- Pandian Chemicals Ltd. v. Commissioner of Income Tax, Madurai (2003) 5 SCC 590.
- Topman Exports v. Commissioner of Income Tax, Mumbai 2012 (3) SCC 593
- St. Aubyn (LM) v. A.G. (1951) 2 All ER 473, p. 485.
- IRC v. Wolfson, (1949) 1 All ER 865, p. 868 (HL).
- Commissioner of Customs (Import), Mumbai v. M/S. Dilip Kumar and Company & Ors. (2018) 9 SCC 1.
- Commissioner of Income-Tax, Bihar and Orissa v. Raja Bahadur Kamakshya Narayan Singh (1948) 16 ITR 325
- Commissioner of Income Tax, Karnataka v. Sterling Foods, Mangalore (1999) 4 SCC 98
- Commissioner of Income Tax v. Willamson Financial Services and Ors (2008) 2 SCC 202.
- Hindustan Lever Ltd. v. Commissioner of Income- Tax, Bombay City-I (1980) 121 ITR 951 (Bom)

J U D G M E N T

S.V.N. BHATTI, J.

I. FACTUAL BACKGROUND

1. Shah Originals/assessee is the appellant in the subject Civil Appeals. The Commissioner of Income Tax-24, Mumbai/Revenue, is the respondent. The appeals arise from the orders dated 22.04.2010 in Income Tax Appeal Nos 431 and 996 of 2008 in the High Court of Judicature at Bombay. The subject matter of the Civil Appeals relates to the assessment years 2000-01 and 2001-02. The appeals presented before this Court have a similar set of facts and a common question for the decision of this Court and, hence, are disposed of by this common judgment.

1.1 Civil Appeal No. 2664 of 2011 has been treated as the lead case. A reference to the circumstances, consideration and conclusions by the High Court and the authorities in the lead appeal is sufficient for disposing of both the appeals before this Court.

1.2 The assessee claims to be a 100% Export-Oriented Unit (EOU). The assessee for the assessment year 2000-01 filed returns declaring the total taxable income at Rs. 28,25,080/- (Rupees Twenty-Eight Lakhs TwentyFive Thousand and Eighty). The assessee for the relevant assessment year had adopted export turnover at Rs. 8,27,15,688/- (Rupees Eight Crores Twenty-Seven Lakhs Fifteen Thousand Six Hundred and EightyEight). The said turnover included an amount of Rs. 26,62,927/- (Rupees Twenty-Six Lakhs Sixty-Two Thousand Nine Hundred and Twenty-Seven) being gains on accounts of foreign currency fluctuations in the assessment year 2000-01. The assessee treated the said earning from foreign currency as income earned by the assessee in the course its export of goods/merchandise out of India, i.e., profits of business from exports outside India. The assessee claimed deduction under Section 80 HHC of the Income Tax Act, for short, “the Act”.

2. The Assessing Officer (AO), by the assessment order dated 10.02.2006, disallowed the deduction claim of Rs. 26,62,927/- and added it to the assessee's taxable income. The case of the Revenue is that gain/profit on account of foreign currency fluctuations in the Exchange Earners Foreign Currency (EEFC) account cannot be attributed as an earning from the export of goods/merchandise outside India by the assessee. The assessee has completed the export obligations and received the foreign exchange remittances from the buyers/importers of the assessee’s goods. The credit

of the foreign currency in the EEFC account and positive fluctuation at the end of the financial year cannot be treated as the assessee's income/receipt from the principal business, i.e., export of goods and merchandise outside India. It is pointed out by the Revenue that the Reserve Bank Notification No. FERA.159/94-RB dated 01.03.1994 permitted foreign exchange earners to open and operate an EEFC account by crediting a percentage of foreign exchange into the account. The guidelines issued in continuation of the Notification dated 01.03.1994 allow the units covered by the notification to credit twenty-five per cent or as permitted, in the EEFC accounts and operate in foreign currency. In other words, the credit of foreign exchange to the EEFC account facilitates the foreign exchange earners to use the foreign currency in the EEFC account depending upon the business necessities of the exporter.

2.1 In the case at hand, the assessee received the foreign exchange remittances and credited the foreign exchange in the EEFC account. At the end of the financial year, the convertible foreign exchange value was reflected in the assessee's balance sheet. The assessee has gained/earned from the fluctuation in foreign currency credited to its EEFC account. Therefore, the maintenance of an EEFC account is neither necessary nor incidental in any manner to the export activity of the assessee. Crediting remittances or maintaining a balance in an EEFC account is akin to any deposit held by an assessee in the Indian Rupee. The Revenue opposes the deduction under section 80 HHC because gains from foreign currency fluctuation are not a profit derived from exporting goods/merchandise outside India. By the assessment order dated 10.02.2006, the deduction was disallowed. The assessee, aggrieved by the disallowance, filed an appeal before the Commissioner of Income Tax (Appeals), who dismissed the assessee's appeal by the order dated 21.11.2006. The assessee filed the ITA No. 1254/MUM/2007 before the Income Tax Appellate Tribunal, Mumbai. On 25.10.2007, the Appellate Tribunal, by the common order dated 25.10.2007, set aside the disallowance of the deduction claimed under Section 80 HHC of the Act of the gains earned on account of foreign exchange fluctuations. The Revenue filed an appeal under Section 260(A) of the Act, and through the impugned judgment, the appeal at the instance of Revenue was allowed, resulting in restoring the disallowance of the deduction under Section 80 HHC of the Act. Hence, the appeal at the instance of the assessee.

II. SUBMISSIONS BY PARTIES

3. Mr. V.P. Gupta, learned counsel for the assessee, contends that the assessee is a 100% EOU. In the subject assessment year, the assessee has earned foreign currency from the export of garments outside India and, as provided by notification dated 01.03.1994, has credited a portion of foreign currency earned in the EEFC account. To meet the business exigencies, the assessee has used the credited amount in the EEFC account to promote or meet its business needs. Section 80 HHC provides for a deduction of profits of business from exports. The High Court erred by not noticing that the foreign exchange is chargeable or computed under the head "profits and gains of business or profession". The High Court answered the question framed, *viz.,* whether the Tribunal was right in setting aside the disallowance of gain earned from foreign exchange fluctuations by the assessee without recording findings on crucial matters in issue.

3.1 It is argued that sub-section (1) of Section 80 HHC allows the deduction of profits of business derived from exports of goods/merchandise outside India. Sub-section (1) of Section 80 HHC is appreciated by also applying sub-section (3) of the section. The combined reading of sub-sections (1) and (3) of Section 80 HHC would bring the gain from foreign exchange within the fold of profits from the business of exports outside India. The said sub-section (3) provides that profits derived from export shall be the amount which bears to the business's profit, the same proportion as the export turnover with the total business turnover carried on by the assessee. Clause (baa) of the Explanation to Section 80 HHC clearly states that the profit of the business, as computed under the head "profits and gains of business or profession", is reduced by ninety percent of the items mentioned therein, including interest. The income under the head "profits and gains of business or profession" is arrived in the manner provided under Section 80 HHC by keeping the CBDT Circular No. 347 dated 07.07.1982 in perspective**.** The conversion of foreign currency into Indian Rupee at the closure of the financial year is revenue in nature and is ancillary and incidental to the business of the assessee. Therefore, the profit or loss on account of conversion of the foreign currency is of revenue account or trading asset or as a part of circulating capital, and the gain from foreign exchange fluctuation comes within the permissible deduction of Section 80 HHC of the Act. He places strong reliance on ***Sutlej***

Cotton Mills Ltd. v. Commissioner of Income Tax, Calcutta [1] and ***Commissioner of Income Tax, Delhi v. Woodward Governor India Pvt. Ltd*** [2]**.** The Learned Counsel also places reliance on ***Commissioner of Income Tax and Anr. v. Motorola India Electronics (P) Ltd.*** [3] and contends that the ratio therein directly deals with the contingencies of an EEFC account. He argues that a direct nexus exists between the gain from foreign exchange fluctuation and the assessee's business income from exports. The deposit of funds in an EEFC account is appreciated from the business perspective of the exporter; denying or disallowing deduction under Section 80 HHC is illegal. In fine, the arguments are:-

i. The foreign exchange credited to the EEFC account is a direct revenue from the export of garments.

ii. The foreign exchange credited to the EEFC account is used for the business purposes of the assessee**.**

iii. The exchange fluctuation is incidentally attributable to the business of the assessee, and necessarily, the deduction under Section 80 HHC is available.

iv. The computation of business income is correctly carried out by the assessee by applying Clause (baa) of Section 80 HHC.

v. A combined reading of sub-sections (1) and (3) applies to Section 80 HHC.

4. Mr. Arijit Prasad, learned senior counsel appearing for the Revenue, argued that whether the deduction claimed under Section 80HHC is a profit derived from the export business depends on each case's facts and circumstances. None of the precedents relied upon by the assessee deals with a foreign exchange fluctuation. The case on hand deals with profit or gain earned by the assessee on the fluctuation of foreign currency maintained in the EEFC account. The deduction attracts strict compliance with Section 80 HHC of the Act. Before appreciating the effect of gain or loss of foreign exchange fluctuation on profits of business from exports, this Court could consider the scheme under which the assessee is allowed to credit the foreign currency in EEFC accounts.

5. The Reserve Bank of India (RBI), through Notification No. FERA.159/94-RB dated 01.03.1994 permitted an EOU or a unit located in a unit processing zone/park in Software Technology Park or Electronic

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[1] (1978) 4 SCC 358.
[2] (2009) 13 SCC 1.
[3] (2013) SCC OnLine Kar 10731.

Hardware Technology Park to open and operate an EEFC account with an authorized dealer and credit to such an EEFC account up to fifty percent of any foreign exchange remittances received from outside India. The guidelines provide the method and manner of opening and operating an EEFC account. According to the learned senior counsel, an EEFC account is an adjunct/facility provided by the RBI to the 100% EOUs to credit foreign exchange earnings in the EEFC account and transact in foreign exchange on overseas commitments from the said account. The EEFC account is a facilitator rather than a mandatory requirement for doing export business or earning foreign exchange. It is argued that opening an EEFC account is not even an adjunct for necessarily doing export business of garments by the assessee. According to Mr. Arijit Prasad, the credit by the assessee is like a transfer/deposit into a bank account. In the case at hand, the foreign exchange currency maintained by the assessee had positive appreciation from the date of receipt till the end of the financial year. The earned foreign exchange appreciation is not a derived income from the business activity of the assessee, namely, the export of goods/merchandise outside India. Section 80 HHC conspicuously refers to the words “derived from” to merit a deduction under Section 80 HHC of the Act. The expression “derived from” ought not to be understood or interpreted as “attributable to”. He places strong reliance on ***Pandian Chemicals Ltd. v. Commissioner of Income Tax, Madurai***[4] for the interpretation commended on the expression “derived from”. The expression must be literally understood, and the ambit of deductions is not expanded through interpretation. He invites our attention to the judgment under appeal and the orders of the AO/CIT to contend that the findings of fact disallowing the deduction of gains in the EEFC account from foreign exchange fluctuation are well-founded. The credit is independent of the business of exports, and earning is a passive earning of the assessee. Therefore, the income claimed as a deduction must have a direct nexus with the main business activity and be a derivative income from that activity. The disallowance of deduction under Section 80 HHC is justified in law, and no ground is made for interference.

III. ANALYSIS

[4] (2003) 5 SCC 590.

6. In the above narrative, the question that falls for our consideration is "whether the gain on foreign exchange fluctuation in the EEFC account of the assessee partakes the character of profits of the business of the assessee from exports and can the gain be included in the computation of deduction under profits of the business of the assessee under Section 80 HHC of the Act?"

6.1 The admitted circumstances are that the assessee is a 100% EOU of garments. In the subject financial year, the assessee recorded the turnover of exports and the profits from the export of goods and merchandise outside India. It is also admitted that the assessee, without delay, received the consideration against the goods exported. With respect to the foreign exchange earned from the exports of goods, instead of converting the exchange immediately to Indian currency, the assessee credited a percentage of the foreign exchange to the EEFC account. The assessee received a gain of Rs. 26,62,927/- from the amount credited to the EEFC account due to an upward revision in the exchange rate at the end of the financial year. The assessee claimed deduction of gains from fluctuation in foreign currency under Section 80 HHC of the Act. The assessee argues that, *firstly,* EEFC is an enabling account for an exporter of the categories covered by the RBI Notification dated 01.03.1994; *secondly,* the account holders are authorised to meet their overseas financial commitments from the foreign exchange credited in their EEFC account. Therefore, the EEFC account is used for the assessee's business; hence, the gain in foreign exchange fluctuation is treated as profits of business while computing the permissible deduction under Section 80 HHC of the Act.

6.2 The Revenue has not denied the deduction of profits of business earned from the export of goods and merchandise to the assessee. The Revenue contends that crediting foreign exchange earned in an EEFC Account is only an enabling facility provided by the RBI to the export earners and the EEFC account, and the account does not have much to do with the business of the assessee, *viz*., export of garments. The opening and running of an EEFC account are not mandatory for any exporter, but it facilitates transactions in foreign exchange from the account of the assessee. In other words, it is neither necessary nor incidental for doing export business of garments but is purely optional. Therefore, the gains earned from foreign exchange fluctuation of the amount credited in the EEFC account cannot be treated as profit from the export business of garments for deduction under Section 80 HHC of the Act.

7. We find it useful to set out beforehand the origin, scheme, and advantage of opening and maintaining an EEFC account by a 100% EOU or a unit located in the Export Processing Zone, Software Technology Park, or Electronic Hardware Technology Park. Notification No. FERA.112/92/RB dated 12.03.1992 permits opening an EEFC Account. This Notification has been issued under sub-section (1) to Section 8 read with sub-section (3) to Section 73 of the Foreign Exchange Regulation Act, 1973 (the FERA). This Notification aims to facilitate an account separately maintained with the foreign currency received by an exporter. The said permission granted by the RBI has to be equated with a facility to an exporter of one or the other categories referred to in the Notification and maintain the transactions in foreign exchange conforming to the FERA.

7.1 The guidelines issued for the EEFC account are placed as Annexure-P1 in the Civil Appeal. We have perused the guidelines and appreciate their object. The guidelines show how the amounts in foreign exchange are credited and the bonafide use of amounts separately credited or parked in the EEFC account. The amount credited to an EEFC account represents foreign currency. The foreign currency/exchange rate is susceptible to upward or downward value. By the Notification and Annexure-P1, we record that opening and maintaining an EEFC account is not a mandatory requirement for export business or earning profits in the business of export outside India. Had the gain been on account of any statutory scheme, the ratio in ***Topman Exports v. Commissioner of Income Tax, Mumbai***[5] is attracted and applied. On referring to the Notification dated 01.03.1994 we hold that the EEFC account is a facility under the FERA. Therefore, we must necessarily examine the gain from foreign currency fluctuation from the perspective of Section 80 HHC.

7.2 Let us refer to the judgment reported in ***Topman Exports (supra)***. The case considers a situation, *viz.,* statutory flair/character of the revenue receipt and treatment, as eligible for deduction under Section 80HHC. The case considers the interplay between Section 28 Clause (iii-d) and Section 80 HHC of the Act. The controversy in ***Topman Exports (supra)*** was that the assessee was claiming a deduction of Rs. 83,69,303/- (Rupees EightyThree Lakhs Sixty-Nine Thousand Three Hundred and Three) under

[5] 2012 (3) SCC 593.

Section 80HHC of the Act on the sale of Duty Entitlement Pass Book (DEPB) and Duty-Free Replenishment Certificate (DFRC), which had accrued to the assessee on the export of its products. This Court directed the AO to compute the deduction under Section 80HHC of the Act and observed that the DEPB/ Duty Drawback is relatable to the cost of manufacture and has a direct nexus with the cost of imports. The relevant paragraphs are as follows: -

*"**37.** … that where an assessee has an export turnover exceeding Rs 10 crores and has made profits on transfer of DEPB under clause (iii-d) of Section 28, he would not get the benefit of addition to export profits under the third or fourth proviso to sub-section (3) of Section 80-HHC, but he would get the benefit of exclusion of a smaller figure from "profits of the business" under Explanation (baa) to Section 80-HHC of the Act and there is nothing in Explanation (baa) to Section 80-HHC to show that this benefit of exclusion of a smaller figure from "profits of the business" will not be available to an assessee having an export turnover exceeding Rs 10 crores. In other words, where the export turnover of an assessee exceeds Rs 10 crores, he does not get the benefit of addition of ninety per cent of export incentive under clause (iii-d) of Section 28 to his export profits, but he gets a higher figure of profits of the business, which ultimately results in computation of a bigger export profit.*

***38.** The High Court, therefore, was not right in coming to the conclusion that as the assessee did have the export turnover exceeding Rs 10 crores and as the assessee did not fulfil the conditions set out in the third proviso to Section 80-HHC(3), the assessee was not entitled to a deduction under Section 80-HHC on the amount received on transfer of DEPB and with a view to get over this difficulty the assessee was contending that the profits on transfer of DEPB under Section 28(iiid) would not include the face value of DEPB."*

8. The assessee further contends that the Judgment under appeal has not recorded a finding on whether or not the foreign exchange difference could be chargeable under the head "profits and gains of business and

profession". The judgment under appeal has not referred to sub-section (3) of Section 80 HHC of the Act. A combined reading of sub-sections (1),

(2) and (3) of Section 80 HHC of the Act, read with Clause (baa) of the Explanation to Section 80 HHC, would include the gain from foreign exchange fluctuation.

8.1 *Per contra*, the reply of learned counsel appearing for the Revenue is that Section 80 HHC deals with a permissible deduction while computing the assessee's tax liability. The provisions of a tax statute are interpreted strictly, and the literal meaning of the expression "derived from" ought not to be confused with the words "attributable to". Interpreting literally, it is contended that the words "derived from" mentioned in sub-sections (1) and (3) would be the deciding factor whether the gain from the foreign exchange fluctuation forms a part of the business income of the assessee or not. We may refer to the illustration given by Mr. Arijit Prasad; the crediting of foreign exchange into an EEFC account is like transferring from one account to another, and the gain from foreign exchange appreciation is, in no way, attributable to the assessee's business of export of goods or merchandise outside India. The foreign exchange fluctuation resulting in gain, disallowed under Section 80 HHC, is looked at by tracing the origin of income or the source from which the gain is derived. The gain cannot be given the status of profits from the business of exports unless the gain is said to be derived from the business of exports of goods/merchandise. The learned senior counsel argues that if the foreign currency fluctuation gain is included in Section 80 HHC, all the incomes earned by the assessee will come under the head "profit or gain from business or profession", and no other head under Section 14 of the Act is attracted.

8.2 The Counsel for Revenue explains that a foreign exchange appreciation gain due to a delayed remittance is a different consideration. In the subject assessment year, the assessee's case is not that there is a delay in the receipt of the sale price and the gain has occasioned in the delayed period. The case at hand is of a credit of a certain percentage of foreign exchange earnings in an EEFC account, and the credited amount has appreciated in Rupee convertibility at the end of the financial year. The findings of fact on the nature of the investment and the circumstances in which gains are earned by the dealer, disallowing the deduction under

Section 80 HHC, in the facts and circumstances of the case, are valid and tenable.

9. We have perused the citations Mr. V. B. Gupta, learned counsel appearing for the assessee, has placed a strong reliance on. The cases relied on by the assessee are clearly distinguishable on the point of deciding the appeal. The ratio does not apply to the facts and circumstances of the case. Hence, we are not adverting to them in detail or explaining why these decisions are distinguishable.

9.1 Section 80 HHC of the Act reads as follows:

"S.80HHC. Deduction in respect of profits retained for export business.- 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 (1B), derived by the assessee from the export of such goods or merchandise.

Provided that if the assessee, being a holder of an Export House Certificate or a Trading House Certificate, (hereinafter in this section referred to as an Export House or a Trading House, as the case may be,) issues a certificate referred to in clause (b) of sub-section (4A), that in respect of the amount of the export turnover specified therein, the deduction under this sub-section is to be allowed to a supporting manufacturer, then the amount of deduction in the case of the assessee shall be reduced by such amount which bears to the total profits derived by the assessee from the export of trading goods, the same proportion as the amount of export turnover specified in the said certificate bears to the total export turnover of the assessee in respect of such trading goods.

xxx *xxx* *xxx*

xxx *xxx* *xxx*

(3) For the purposes of sub-section (1),-

(a) where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export. (emphasis supplied) xxx
xxx xxx"

10. Section 80 HHC provides for the deduction of profits the assessee derives from exporting such goods/merchandise. The operation of Section 80 HHC is substantially dependent on two sets of expressions, *viz.,* (a) is engaged in the business of export outside India of any goods/merchandise; (b) a deduction to the extent of profits defined in subsection (1B) derived by the assessee from the export of such goods/merchandise. The main point of discussion is on the gain in foreign exchange vis-à-vis the export business of the assessee.

10.1 In interpreting a section in a taxing statute, Lord Simonds, in the case ***St. Aubyn (LM) v. A.G.***[6]*,* observed that "the question is not at what transaction the section is according to some alleged general purpose aimed, but what transaction its language according to its natural meaning fairly and squarely hits." Lord Simonds calls this "the one and only proper test." Therefore, it is not the function of a court of law to give words a strained and unnatural meaning to cover loopholes through which the evasive taxpayer may find escape or to tax transactions which, had the Legislature thought of them, would have been covered by appropriate words[7].

10.2 This Court, in the recent judgment in ***Commissioner. of Customs (Import), Mumbai v. M/S. Dilip Kumar and Company & Ors.*** [8] held as

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[6] (1951) 2 All ER 473, p. 485.
[7] IRC v. Wolfson, (1949) 1 All ER 865, p. 868 (HL).
[8] (2018) 9 SCC 1.

follows:-

*"**24.** …It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature. (emphasis supplied)"*

10.3 A taxing provision, including a deduction/exemption, is interpreted strictly. In other words, the interpretation is by the strict legalistic method.
With wisdom and experience, the Parliament used the words "derived from" in Section 80 HHC to indicate the extent to which the deduction is permitted.

10.4 The Privy Council in ***Commissioner of Income-Tax, Bihar and Orissa v. Raja Bahadur Kamakshya Narayan Singh*** [9] **,** while interpreting the expression "derived from", has held:-

"The word "derived" is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the, interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of nonpayment. And rent is not land within the meaning of the definition."

10.5 ***Raja Bahadur Kamakshya Narayan Singh (supra)*** has been considered and relied on by this Court in ***Pandian Chemicals Ltd. (supra)*** and ***Hindustan Lever Ltd. v. Commissioner of Income-Tax***.[10] A catena of decisions deals with the construction of the expression "derived from", especially in the context of the Act. To appreciate the difference between "derived from" and "attributable to", we are not referring to all the fundamental principles of interpretation of statutes or citations on this point. It would suffice if a few decisions on the construction of the expression "derived from" are

[9] (1948) 16 ITR 325.

referred to, in order to decide whether the gain from fluctuation forms a part of the assessee's business income or

not.

S. NO.	NOMINAL INDEX	OBSERVATION
1.	Commissioner of Income Tax, Karnataka v. Sterling Foods, Mangalore[11]	There must be, for the application of the words “derived from”, a direct nexus between the profits and gains and the industrial undertaking.

[10] (1998) 9 SCC 540.

[11] (1999) 4 SCC 98.

2.	Pandian Chemicals Ltd. v. Commissioner of Income Tax, Madurai[10]	The words “derived from” in Section 80-HH of the Income Tax Act, 1961 must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking.
3.	Commissioner of Income Tax v. Willamson Financial Services and Ors.[11]	The word “derived” occurring in Section 80HHC of the Act would mean ‘derived from source’ under Section 14 of the Act.
4.	Hindustan Lever Ltd. v. Commissioner of Income- Tax, Bombay City-I[12]	The word “derived” as far as income tax law is concerned has been given a narrow meaning. In other words, only the proximate source has to be considered and not the source to which it may ultimately be referable.

[10] (2003) 5 SCC 590.
[11] (2008) 2 SCC 202.
[12] (1980) 121 ITR 951 (Bom).

5.	Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. Commissioner of Income-Tax, Gujarat-I[13]	(i) There must be a direct nexus between the activity of export and the earning of profit or gains for application of the expression 'derived from export. (ii) As discussed above, the word “derive” as far as income-tax law is concerned, has been given a narrow meaning—a restricted meaning—by the courts and has been understood in the restricted sense of a direct derivation and not understood in the broad sense as equivalent to derived directly or indirectly.
6.	Commissioner of IncomeTax v. Eastern Seafoods Exports (P.) Ltd.[14]	The term ‘derived’ occurring in Section 80J of the Act is not a term of art. Profits or gains can be said to have been ‘derived’ from an activity carried on by a person only if the said activity is the immediate and effective source of such profits or gains.
7.	Commissioner of IncomeTax v. Viswananthan and Co.[15][16]	The expression “derived from” means to get or trace from a source. It is narrower than the term attributable to.
8.	Kirloskar Electrodyne Ltd. v. Deputy Commissioner of Income-Tax[18]	The term ‘derived from’ has a definite but narrow meaning. It cannot receive a flexible or wider connotation.

[13] (1982) 137 ITR 616 (Guj).
[14] (1995) 215 ITR 64 (Mad).
[15] (2003) 261 ITR 737 (Mad).
[16] SCC OnLine ITAT 25.

11. We have taken note of the construction/interpretation of the expression “derived from” adopted by this Court and a few High Courts as stated in the above-mentioned table—the expressions “derived from” and “since” are used in multiple instances in the Act. Unless the context does not permit, the construction of the expression “derived from” must be consistent.

12. In interpreting Section 80 HHC, the expression “derived from” has a deciding position with the other expression *viz.,* “from the export of such goods or merchandise”. While appreciating the deduction claimed as profits of a business, the test is whether the income/profit is derived from the export of such goods/merchandise.

12.1 Let us read the very relevant words in Section 80 HHC of the Act, namely, “derived by the assessee from the export of such goods or merchandise”, in the background of interpretation given to the said expression by this Court. The Section enables deduction to the extent of profits derived by the assessee from the export of such goods and merchandise and none else.

12.2 The policy behind the deductions of profits from the business of exports is to encourage and incentivise export trade. Through Section 80HHC, the Parliament restricted the deduction of profit from the assessee's export of goods/merchandise. The interpretation now suggested by the assessee would add one more source to the sources stated in Section 80 HHC of the Act. Such a course is impermissible. The strict interpretation is in line with a few relative words, namely, manufacturer, exporter, purchaser of goods, etc. adverted to in Section 80 HHC of the Act. From the requirements of sub-sections (2) and (3) of Section 80 HHC, it can be held that the deduction is intended and restricted only to profits of the business of export of goods and merchandise outside India by the assessee. Therefore, including other income as an eligible deduction would be counter-productive to the scope, purpose, and object of Section 80 HHC of the Act.

13. In ***Topman Exports (supra)***, a converse case is available, where a receipt, pursuant to or in terms of a statutory provision, is treated as income derived from the export business. The instant case is not proved or stated as falling within a statutory requirement/benefit. At foremost, by applying the meaning of the words “derived from”, as held in the catena of cases, we are of the view that profits earned by the assessee due to price fluctuation, in the

facts and circumstances of this case, cannot be included or treated as derived from the business of export income of the assessee. The assessee can be correct that the computation shall be as per Sections 28 to 44 of the Act if the receipt or income is from an export business. As the controversy between the assessee and the Revenue is whether the profit earned on the foreign exchange falls under business income or income from other sources, the interpretation of Clause (baa) in Section 80 HHC is not attracted to the case on hand. Hence, for the above reasons, we hold that the gain from foreign exchange fluctuations from the EEFC account does not fall within the meaning of “derived from” the export of garments by the assessee. The profit from exchange fluctuation is independent of export earnings, and the impugned judgment correctly answers the point.

14. We agree with the reasoning and the view recorded in the Judgment under Appeal. Consequently, Civil Appeal No. 2664 of 2011 fails and is dismissed.

15. For the above reasons and discussion, Civil Appeal No.2665 of 2011 fails and is dismissed. There is no order as to costs.