



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : December 4, 2007

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ITA No. 1388/2006

COMMISSIONER OF INCOME TAX **APPELLANT**

Through Ms. Prem Lata Bansal, Advocate

Versus

M/S. ARVIND CONSTRUCTION CO. LTD. ... **RESPONDENT**

Through: Ms. Bhakti Pasrija, Advocate

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ITA No. 705/2007

COMMISSIONER OF INCOME TAX **APPELLANT**

Through Ms. Prem Lata Bansal, Advocate

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M/S. ARVIND CONSTRUCTION CO. LTD. **RESPONDENT**

Through: Ms. Bhakti Pasrija, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

1. ITA No. 1388/2007 is directed against an order dated 31st March, 2006 passed by the Income Tax Appellate Tribunal, New Delhi Bench 'G' ('Tribunal') in ITA ITA Nos 1388/2006 & 705/2007



No. 492/Del/2001 for the Assessment Year 1997-98. ITA No. 705/2007 is directed against an order dated 19th January, 2007 passed by the Tribunal (Bench 'F') in ITA No. 1263/Del/2004 for the Assessment Year 2000-01. Since the same question of law is urged by the Revenue in both the appeals, they are being disposed by this common order.

2. The questions that have been urged by the Revenue for consideration in both these appeals are under:

(1) Whether interest earned by the Assessee on RBI Bonds is the income derived by it from the business of industrial undertaking so as to be eligible for deduction under Section 80HHB of the Income Tax Act, 1961?

(2) Whether the Tribunal was correct in law in allowing deduction under Section 80-IA of the Act to the Assessee on receipts from transportation of sleepers?

3. The Assessee carried out certain construction works in two different projects in Iraq as a sub-contractor of the Indian Railway Construction Corporation ('IRCON'). On account of the outbreak of war in Iraq, the payments to IRCON were held up. Subsequently, by an agreement between the Governments of India and Iraq, a settlement was arrived at by which the payments would be made to



IRCON on the deferred basis. The total sum due to the Assessee together with interest was calculated at Rs.54.93 crores for the Assessment Year 1997-98 and the said sum was settled as under:

(i)	RBI Bonds	Rs.42,69,91,452/-
(ii)	ECGC Bonds	Rs. 5,61,12,153/-
(iii)	Interest on RBI bonds	Rs. 6,61,83,046/-

4. The Assessee claimed a deduction under Section 80HHB, inter alia, in respect of the interest on RBI bonds to the extent of Rs.6,61,83,046/-. The Assessee also claimed deduction under Section 80-IA of the Act. The Assessing officer ('AO') declined the deduction on the ground that the interest on the RBI bonds was not the income derived from the business activities of the Assessee. Likewise, the AO also disallowed the deduction under Section 80-IA in relation to transportation charges of Rs.54,92,85,651 which the Assessee had received for transportation of certain sleepers made by it to the railway sites. The AO noted that there was a separate agreement for transportation of sleepers and therefore, the income therefrom was not derived from an industrial undertaking as the transportation did not involve any manufacturing or production.

5. The Commissioner of Income Tax (Appeals) ['CIT(A)'] reversed the AO and



allowed the deduction to the Assessee under Section 80HHB in respect of the interest on RBI bonds as well as the deduction under Section 80-IA in respect of the transportation charges received by it. The Tribunal concurred with the view taken by the CIT (A) on both issues and that is how the Revenue has filed the present appeals.

6. It is contended by Ms. Prem Lata Bansal, learned Senior Standing counsel appearing on behalf of the Revenue, that the interest on RBI bonds could never been considered to be the income derived from the business activities of the Assessee. She drew a distinction between income from an activity which is attributable to an industrial undertaking and income that is derived from the business activities. She submitted that the CIT (A) erred in placing reliance upon the judgment in *Commissioner of Income Tax v. Govinda Choudhary & Sons [1993] 203 ITR 881 (SC)* because in the said case the Supreme Court was in fact dealing with the income that was incidental to and, therefore, attributable to the business carried on by the Assessee and not income that was derived from the business activity of the Assessee. Likewise, as regards the deduction claimed under Section 80-IA of the Act in respect of the transportation charges received by the Assessee for transportation of sleepers to the railway sites, she submitted that since there was a separate agreement for this purpose, such income could not qualify for

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the purposes of such deduction. Ms. Bansal further submitted that as regards the connected appeal (ITA No. 705/2007) in respect of the Assessment Year 2000-01 it stood on a different footing since the interest earned on the RBI bonds was not relatable to the said assessment year.

7. We are unable to agree with the submissions advanced made by learned counsel for the Revenue. We find that as regards the interest on the RBI bonds, this was part of the total settlement package by which the Assessee was to receive Rs.54.93 crores for the works undertaken in Iraq as a sub-contractor of the IRCON. In the facts and circumstances of the case, it is not possible to view the interest received on the RBI bonds as payment *de hors* the activity of the Assessee pursuant to the execution of the contract. We do not find any error in the orders of the CIT (A) as well as the Tribunal warranting any interference. No substantial question of law arises on this issue.

8. As regards the payment received on account of transportation charges, the Tribunal has, in our view, rightly observed that the Assessee is transporting sleepers only to the railways at different sites and to no other entity. We are agree with the view expressed by the CIT(A), concurred with by the Tribunal, that business of the Assessee included not only manufacturing but all incidental



activities undertaken till the delivery of the manufactured goods was effected. The benefit of the deduction to the Assessee in terms of Section 80-IA of the Act cannot be denied since the receipts on account of transportation is a part of its business receipts. No substantial question of law arises in this regard either.

9. As regards the connected appeal (ITA No. 705 of 2007) for the Assessment Year 2000-01, we find that in para 6 of the order dated 19th January, 2007 it has been observed by the Tribunal that "there is no dispute that facts of the case in the year under consideration are identical" with the facts of the Assessment Year 1997-98. In that view of the matter, it is not possible to accept the submissions made by learned counsel for the Revenue that the facts of the Assessment Year 2000-01 stood on different footing warranting a different treatment.

10. For the aforementioned reasons, there is no merit in these appeals and they are dismissed as such.


MADAN B. LOKUR, J



S. MURALIDHAR, J

DECEMBER 04, 2007

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