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IN THE HIGH COURT OF DELHI AT NEW D

ITA No. 815 of 2007

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Reserved on: 10th November, 2009

Pronounced on : 23rd December, 2009

Commissioner of Income Tax

... Appellant

through :

Ms. P.L. Bansal, Advocate.

VERSUS

Shriram Pistons & Rings Limited

... Respondent

through:

Mr. Ajay Vohra with Ms. Kavita Jha, Advocates.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Three following questions of law are sought to be raised in this appeal:

- a) Whether the ITAT was correct in law in confirming the order passed by CIT(A) and thereby deleting the addition of Rs.1,06,52,765/- made by the Assessing Officer out of total claim of Rs.4,26,11,059/- on account of royalty expenses, treating the same as revenue expenditure?
- b) Whether ITAT was correct in law in holding that the entire payment of royalty as well as foreign technician fee made by the assessee was revenue expenditure and no part of it can be regarded as capital expenditure?



Rs.5,56,262/- from the total turnover for the pur
computing deduction under Section 80HHC of th

2. Insofar as the first question is concerned, the same is covered in favour of the assessee by two judgments of jurisdictional case in the case of assessee itself, *viz.*, ***Shriram Pistons and Rings Ltd. vs. Commissioner of Income Tax*** [307 ITR 363(Del) and ***Commissioner of Income Tax vs. Shriram Pistons and Rings Ltd.*** [220 CTR 404 (Del)]. The view taken therein finds support from the judgment of this Court in the case of ***Commissioner of Income Tax vs. J.K. Synthetics*** [309 ITR 371 (Del)]. Insofar as the second question is concerned, this again is covered in favour of the assessee in ITA No. 170-71 of 1994 decided on 05.05.2008 entitled ***Shriram Pistons and Rings Ltd. vs. Commissioner of Income Tax.*** Taking note of the above fact, this appeal was admitted and heard only on question of law No. (c) formulated above. We thus proceed to answer this question.
3. This question is framed for consideration in the following circumstances:

The assessee company had claimed deduction under Section 80 HHC of the Income Tax Act (hereinafter referred to as 'the Act') amounting to Rs.1,20,62,000/- and filed a report



(AO) noticed from this form that the total turnover business had been taken at net of excise while computing deduction under Section 80HHC. This aspect is not agitated and in fact, stands decided in favour of the assessee by two judgments of the Supreme Court, *viz.*, ***Commissioner of Income Tax vs. Lakshmi Machine Works*** [290 ITR 667(SC)] and ***Commissioner of Income Tax vs. Catapharma*** [292 ITR 641 (SC)]. However, we are not concerned with this part. The AO also noticed that the other income, which included interest on FDR and interest received on security deposit with Government Department, was not included in the total turnover, but was treated exempted under Section 80HHC of the Act. The AO held that this was to be included in the total turnover for the purpose of computing deduction under Section 80HHC of the Act. The CIT (A) deleted this disallowance and the order of CIT (A) is upheld by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal has simply remarked that the issue is decided in favour of the assessee by the Tribunal for the Assessment Year 1998-99.

4. Insofar as the interest earned on FDR and interest on security deposit with Government Department are concerned, this will not be excluded from the total turnover for the purpose of total



judgment of the Supreme Court in the case of *Liberty I*

Commissioner of Income Tax [(2009) 317 ITR 218] which

reads as under:

“8. On the nature of DEPB it was submitted that the amount of DEPB was granted under Exim-Policy issued in terms of powers conferred under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992. According to the appellant(s), the DEPB Scheme is a Duty Remission Scheme which allows drawback of import charges paid on inputs used in the export product. The object being to neutralize the incidence of customs duty on the import content of the export product by way of grant of duty credit. The DEPB benefit is freely transferable. Thus, according to the appellant(s), duty drawback/DEPB benefit received had to be credited against the cost of manufacture of goods/purchases debited to the Profit & Loss account. That, such credit was not an independent source of profit. In this connection reliance has been placed on Accounting Standard-2 issued by ICAI on "valuation of inventories" which indicates that while determining cost of purchase, cost of conversion and other costs incurred in bringing the inventories to their present location and condition should be considered and that trade discounts, rebates, duty drawback and such other similar items have to be deducted in determining the cost of purchase. Placing reliance on AS-2, it was submitted that where excise duty paid was subsequently recoverable by way of drawback, the same would not form part of the manufacturing cost. It was submitted on behalf of the appellant(s) that payment of excise duty/customs duty on inputs consumed in manufacture of goods by an industrial undertaking eligible for deduction under Section 80IB, was inextricably linked to the manufacturing operations of the eligible undertaking without which manufacturing operations cannot be undertaken, hence the duty, which was paid in the first instance and which had direct nexus to the manufacturing activity when received back, had first degree nexus with the industrial activity of the eligible undertaking and consequently the reimbursement of the said amount cannot be treated as income of the assessee(s) de hors the expense originally incurred by way of payment of duty. Consequently,



qualifying for deduction under Section 80IB of the 19 Act. On behalf of the appellant(s) it was further submitted that this Court's decision in **Sterling Food** (supra) dealt with availability of deduction under Section 80HH with respect to profit on sale of import entitlements. The said decision, according to the appellant, had no applicability to the issue under consideration for the reason that import entitlement/REP licence was granted by the Government on the basis of exports made; the same were granted gratuitously without antecedent cost having been incurred by the industrial undertaking, unlike duty drawback and DEPB, which had direct link to the costs incurred by such industrial undertaking by way of payment of customs/excise duty in respect of duty paid inputs used in the manufacture of goods meant for export and in such circumstances, profit from sale of import entitlements/REP licence was in the nature of windfall and it was in those circumstances, that the apex Court held that source of profit on sale of import entitlements was not the industrial undertaking but the source was the Export Promotion Scheme. According to the appellant(s), in the case of sale of import entitlements/REP licence, the source was the Scheme framed by Government of India whereas in the case of DEPB/duty drawback, the source was the fact of payment of duty in respect of inputs consumed/utilized in the manufacture of goods meant for export. That, but for such payments of duty on inputs used in the manufacture of goods meant for exports, industrial undertaking(s) would not be entitled to the benefit of duty drawback/DEPB, notwithstanding, the Export Promotion Scheme of the Government and, therefore, there was a direct and immediate nexus between payment of duty on such inputs and receipt of duty drawback/DEPB. In this connection reliance was placed on the judgment of the Gujarat High Court in the case of **CIT v. India Gelatine and Chemicals Ltd.** reported in 275 ITR 284. Lastly, it was submitted on behalf of the appellant(s) that there was no difference between Advance Licence Scheme and duty drawback/DEPB. In this connection it was urged that duty drawback regime required the industrial undertaking to pay in the first instance the duty on inputs and thereafter seek reimbursement on profit of goods manufactured using such duty paid inputs, having been exported. The industrial undertaking alternatively could avail of Advance Licence Scheme whereunder the industrial undertaking could import inputs to be used for



as shown in Profit & Loss account was regarded income derived from industrial undertaking entitled deduction under Section 80IB of the 1961 Act without any adjustment whereas when the same industrial undertaking when it opts for duty drawback is denied the benefit of deduction under Section 80IB on the duty remitted.

9. On behalf of the appellant(s) it was submitted that Section 80IB was different from Section 80I in the sense that under Section 80IB, income derived from business of an industrial undertaking was admissible for deduction whereas under Section 80I deduction was allowable to income derived from industrial undertaking. Hence, according to the appellant(s) provision of Section 80IB was much wider in scope than Section 80I. According to the appellant(s) Section 80IB was wider than Section 80I as the Legislature intended to give benefit of deduction not only to profits derived from the undertaking but also to give benefit of deduction in respect of incomes having direct nexus with the profits of the undertaking, hence, all incomes that arose during the course of running of the eligible business would be eligible for deduction under Section 80IB, which would include income arising on sale of DEPB at premium.”

5. Though the aforesaid case related to Section 80I, 80IA and 80IB, the language of Section 80 HHC of the Act, with which we are concerned, is identical. Even in the context of Section 80HHC, this Court has taken view in the case of *Commissioner of Income Tax etc. vs. Shri Ram Honda Power Equip etc.* [289 ITR 475] read with Explanation (baa) of the Act that the assessee would not be entitled to interest received by it while calculating deduction under the said provision.



6. As a consequence, the question of law as framed stands in favour of the Revenue and against the assessee. This appeal is partly allowed, as aforesaid.

No costs.

(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

December 23, 2009.
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