



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No. 248 of 2009
with
ITA No. 545 of 2006
ITA No. 18 of 2007
ITA No. 765 of 2007
ITA No. 816 of 2007
ITA No. 796 of 2007

% Reserved on: November 10, 2009
Pronounced on: November 30, 2009

1. ITA No. 248/2009

Commissioner of Income Tax, Delhi -I . . . Appellant

through : Ms. Prem Lata Bansal, Advocate

VERSUS

Advance Detergents Limited . . . Respondent

through : Mr. B.B. Bhagat with Mr. Amit
 Bhagat and Mr. Pulkit Gupta,
 Advocates

2. ITA No. 545/2006

Commissioner of Income Tax, Delhi -I . . . Appellant

through : Ms. Prem Lata Bansal, Advocate

VERSUS

M/s. Bharat Rasayan Limited . . . Respondent

through : Mr. Ajay Vohra with
 Ms. Kavita Jha, Ms. Akansha
 Aggarwal and Mr. Sriram Krishna,
 Advocates

3. ITA No. 18/2007

*VERSUS*

M/s. Bharat Rasayan Limited

. . . Respondent

through :Mr. Ajay Vohra with
Ms. Kavita Jha, Ms. Akansha
Aggarwal and Mr. Sriram Krishna,
Advocates4. ITA No. 765/2007

Commissioner of Income Tax, Delhi -I

. . . Appellant

through :

Ms. Prem Lata Bansal, Advocate

VERSUS

M/s. Bharat Rasayan Limited

. . . Respondent

through :Mr. Ajay Vohra with
Ms. Kavita Jha, Ms. Akansha
Aggarwal and Mr. Sriram Krishna,
Advocates5. ITA No. 816/2007

Commissioner of Income Tax, Delhi -I

. . . Appellant

through :

Ms. Prem Lata Bansal, Advocate

VERSUS

M/s. Bharat Rasayan Limited

. . . Respondent

through :Mr. Ajay Vohra with
Ms. Kavita Jha, Ms. Akansha
Aggarwal and Mr. Sriram Krishna,
Advocates6. ITA No. 796/2007

Commissioner of Income Tax, Delhi -I

. . . Appellant

through :

Ms. Prem Lata Bansal, Advocate

M/s. Bharat Rasayan Limited

. . . Responder

through :

Mr. Ajay Vohra with
Ms. Kavita Jha, Ms. Akansha
Aggarwal and Mr. Sriram Krishna,
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?

Yes

A.K. SIKRI, J.

1. ITA No. 248/2009

This appeal was admitted and heard on the following substantial question of law :-

"Whether the ITAT was correct in law in holding that the interest earned by the assessee on late payment received from the customers is eligible for deduction under Section 80-IA of the Income Tax Act, 1961?"

2. This question has arisen for consideration under the following circumstances:
3. The assessee is an industrial undertaking. For the assessment year 1997-98, it filed its return declaring income as 'Nil'. During the assessment proceedings, the Assessing Officer (AO) noticed that the assessee had shown a sum of Rs.12,60,540/- under the head '*Miscellaneous Receipts*' and had taken that amount into consideration while computing deductions under Section 80-IA of the



represented interest on late payment charges by the purchase goods, to whom the goods had been exported. The AO reduced this amount from the profits of the business for the purposes of computing deduction under Section 80-IA of the Act, treating the aforesaid income of Rs.12,60,540/- as '*Income from Other Sources*' and not *business income*. View of the AO was that the interest receipts had not been earned by the assessee out of its manufacturing activities and it had no direct or immediate access with the industrial undertaking of the assessee.

4. Order of the AO was confirmed by the Commissioner of Income Tax (Appeals). However, on further appeal preferred before the Income Tax Appellate Tribunal (for short, the 'Tribunal'), the appeal of the assessee has been allowed by the Tribunal by directing the AO to compute the deductions under Section 80-IA of the Act and treating the aforesaid income as business income. The Tribunal, for arriving at this conclusion, has referred to various judgments of different High Courts and different Benches of the Tribunal itself.
5. Section 80-I of the Act provides for a deduction from the profits and gains, of an amount equal to 20% thereof in those cases where the gross total income of an assessee includes any profits and gains derived, *inter alia*, from an industrial undertaking. Sub-section (1), which is relevant for us, reads as under :-

"80-I (1) Where the gross total income of an assessee



subject to the provision of this section, be allowed, computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:

Provided that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent", the words "twenty-five per cent" had been substituted."

It is clear from the bare reading of this provision that only such profits and gains which are derived from an industrial undertaking are to be taken into consideration for computing deduction equal to 20%.

6. In this backdrop, the question for consideration before us is as to whether the interest received by the assessee on overdue payments from the customers is to be considered as profits and gains which are derived from an industrial undertaking.
7. As pointed out above, the Tribunal has referred to various judgments of the High Courts as well as other Benches of the Tribunal. We may, however, begin our discussions with the recent case decided by the Supreme Court in *Liberty India v. Commissioner of Income Tax*, (2009) 317 ITR 218 in which it has discussed and explained the contents and scope of said provision in a very lucid manner. The interpretation of Section 80-IA and other sections in the said judgment would provide sufficient guidelines to decide the question of law which has arisen for consideration in the present case.



market. It had claimed deduction under Section 80-IB of the the increased profits of Rs.22,70,056/- as profit of the industrial undertaking on account of DEPB and duty drawback credited to the profit and loss account. The question which fell for consideration before the Supreme Court was as to whether profits from the DEPB duty drawback scheme could be said to be profits derived from the business of industrial undertaking. It was in this context that the Apex Court discussed the meaning of the words 'derived from'. Even before discussing the implication of the aforesaid words, the Court pointed out that though focus was on the analysis of Section 80-IB, the basic scheme of Section 80-I, 80-IA and 80-IB remains the same. The Court was of the view that the words 'derived from' are narrower in connotation as compared to the words 'attributable to'. Thus, by using the expression 'derived from', the Parliament intended to cover sources not beyond the first degree. Accordingly, only such profits are to be computed as if such eligible business is the only source of income of the assessee. Therefore, the devices adopted to reduce or inflate the profits of the eligible business have got to be rejected in view of the overriding provisions of sub-section (5) of Section 80-IA, which is required to be read into Section 80-IB because of common scheme of incentives in the form of deductions as contained in both the sections, which were linked to profits and not for investments. Giving this interpretation to the aforesaid provision, the Court observed as under :-



Sub-section (1) only to the extent of profits derived from si industrial undertaking after specified date(s). Hence, apart fr eligibility, Sub-section(1) purports to restrict the quantum or deduction to a specified percentage of profits. This is the importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking".

9. Applying the principle in respect of DEPB benefits of duty drawback receipts, after explaining the said schemes the Court opined that those incomes would constitute independent source of income beyond the first degree nexus between profits of the industrial undertaking and, therefore, were not to be treated as profits derived from the business of industrial undertaking eligible for deduction under Section 80-IB of the Act.
10. We now proceed to determine the question posed before us, applying the principle laid down by the Supreme Court in the aforesaid case.
11. The respondent assessee, which is an industrial undertaking, had supplied goods to its various customers which had been manufactured by it. Some of these customers did not make payment in time. The dues which were payable by those buyers attracted interest on late payment charges. In this manner, ultimately, the payments which were received by the assessee against the supply of goods also included interest on overdue payments.
12. Precisely, this very issue came up for consideration before the Gujarat



also a case where interest was received by the assessee from debtors for late payment of the sale proceeds and the question was as to whether this interest can be treated as the income derived from the business for the purpose of Section 80-I of the Act. Answering the question in favour of the assessee, the Gujarat High Court relied upon the judgment of the Apex Court in the case of *Commissioner of Income Tax, Orissa v. Govinda Choudhury & Sons, Gosaninuagaon, Orissa*, (1993) 203 ITR 881 in which case the Supreme Court had held that interest was of the same nature as other trading receipts in the following manner :-

“The assessee is a contractor. His business is to enter into contracts. In the course of the execution of these contracts, he has also to face disputes with the State Government and he has also to reckon with delays in payment of amounts that are due to him. If the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him. It would not be correct, as the Tribunal has held, to say that this interest is totally de hors the contract business carried on by the assessee. It is well settled that interest can be assessed under the head 'Income from other sources' only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In our view, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the awards and treated as 'income from other sources'”.

13. The Gujarat High Court approached the issue from another angle for arriving at the same conclusion. It observed that when the assessee



sale price and added to the outstanding till the point of realisation, or (b) that in case of delay the payment for sale of products worth Rs. 100/- to carry the sale price of Rs. 102/- for first month's delay, Rs. 104/- for second month's delay, Rs. 106/- for third month's delay and so on. If the contention of revenue is accepted, merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration (b) above, if the payment is described as sale price it would be profits derived from the industrial undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale proceeds. In other words, this is a converse situation to offering of cash discount. Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds.

14. Thus, according to the Gujarat High Court, when interest is paid on delayed payment, it can be treated as higher sale price which is converse situation to offering of cash discount because the transaction remains the same and there is no distinction as to the source. Looking from this angle, the interest becomes part of the hire sale



therefrom. It is, thus, the direct result of the sale of goods. income is derived from the business of industrial undertaking.

15. Same view is expressed by various other High Courts in the following judgments :-

- (i) *Phatela Cotgin Industries (P) Ltd. v. Commissioner of Income Tax*
303 ITR 411 (P&H)
- (ii) *Commissioner of Income Tax v. Flender Macneil Gears Ltd.*
150 ITR 83 (Cal)
- (iii) *Tata Sponge Iron Ltd. v. Commissioner of Income Tax*
292 ITR 175 (Orissa)
- (iv) *Commissioner of Income Tax v. Indo Matsushita Carbon Co. Ltd.*
286 ITR 201 (Mad)

16. There is no reason to depart from the aforesaid view taken consistently by various High Courts, which is in tune with the principle laid down by the Supreme Court in *Liberty India* (supra). We answer this question in favour of the assessee and against the Revenue.

17. ITA Nos. 545 of 2006, ITA No. 18 of 2007, ITA No. 765 of 2007
ITA No. 816 of 2007 & ITA No. 796 of 2007

These appeals came up for hearing on 16.11.2009. The question of law raised in ITA No. 248/2009 was common to these appeals as well. Learned counsel for the parties made additional submissions on the said question which has already been taken into consideration while deciding ITA No. 248/2009. Most of the other questions stand covered in favour of the Revenue or the assessee, which position was accepted at the time of hearing.



18. ITA No. 816/2007

This appeal was admitted on the following three substantial questions of law :-

“1. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sec. 80-IA of the Income Tax Act, 1961 on interest received from trade debtors and also on interest earned on FDRs?

2. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sec. 80-IA of the Income Tax Act, 1961 on the amount of duty draw back and on the amount received by the Assessee on sale of DEPB and QBAL licensees?

3. Whether the Income Tax Appellate Tribunal was correct in law in allowing deduction to the Assessee under Section 80-IA of the Income Tax Act, 1961 on the amount of notional credit of custom duty on goods imported for self-consumption?”

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction under Section 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Commissioner of Income Tax etc. etc. v. Shri Ram Honda Power Equip etc. etc.*, 289 ITR 475.

Insofar as the 2nd and 3rd questions are concerned, they are decided in favour of the Revenue and against the assessee following the judgment of the Supreme Court in *Liberty India* (supra).

19. ITA No. 545/2006

This appeal was admitted on the following question of law :-



Section 80HHC read with Explanation (baa) of the Income Act, 1961?"

This question is answered in favour of the Revenue in view of the judgment of this Court in *Shri Ram Honda Power Equip* (supra).

20. ITA No. 18/2007

The following questions of law have been framed for consideration :-

1. Whether the Income Tax Appellate Tribunal was correct in law in holding that the assessee was entitled to reduce interest paid by it against interest received by it while calculating deduction under Section 80HHC read with explanation (baa) of the Income Tax Act, 1961?

2. Whether the Income Tax Appellate Tribunal was correct in law in holding that the assessee is entitled to deduction under Section 80-IA of the Act on interest received from trade debtors and also on interest earned on FDRs?

3. Whether the Income Tax Appellate Tribunal was correct in law in holding that the assessee is entitled to deduction under Section 80-IA of the Act on the amount of Rs.25,200/- being duty drawback and amount of Rs.26,64,455/- received on sale of DEPB and QBAL licensees?"

The first question is answered in favour of the Revenue in the light of the judgment of this Court in *Shri Ram Honda Power Equip* (supra).

Insofar as the second question is concerned, the same is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction under Section 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip etc. etc.* (supra).



21. ITA No. 765/2007

The following questions arise for consideration in this appeal :-

"1. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sec. 80-IA of the Income Tax Act, 1961 on interest received from trade debtors and also on interest earned on FDRs?

2. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sec. 80-IA of the Income Tax Act, 1961 on the amount of duty drawback and on the amount received by the Assessee on sale of DEPNB and QBAL licensees?

3. Whether the Income Tax Appellate Tribunal was correct in law in allowing deduction to the Assessee under Section 80-IA of the Income Tax Act, 1961 on the amount of notional credit of custom duty on goods imported for self-consumption?"

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction under Section 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip etc. etc.* (supra).

The second and third questions are answered in favour of the Revenue in view of the judgment in *Liberty India* (supra).

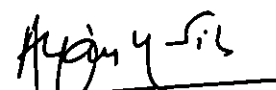
22. ITA No. 796/2007

The following substantial questions of law are framed for consideration :-

- “1. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sec. 80-IA of the Income Tax Act, 1961 on interest received from trade debtors and also on interest earned on FDRs?
2. Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to deduction under Sect. 80-IA of the Income Tax Act, 1961 on the amount of duty drawback and on the amount received by the Assessee on sale of DEPB and QBAL licensees?
3. Whether the Income Tax Appellate Tribunal was correct in law in allowing deduction to the Assessee under Section 80-IA of the Income Tax Act, 1961 on the amount of notional credit of custom duty on goods imported for self-consumption?”

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction under Section 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip etc. etc.* (supra).

The second and third questions are answered in favour of the Revenue in view of the judgment in *Liberty India* (supra).


(A.K. SIKRI)
JUDGE

