**Reportable**

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

\+ **ITA No. 241 of 2004**
**ITA No. 466 of 2007**
**ITA No. 113 of 2009**
**ITA No. 616 of 2007**

% Reserved On: November 16, 2010
Pronounced On: December 24, 2010

**(1) ITA No.241 of 2004**

**M/S LOTUS TRANS TRAVELS P. LTD. . . .APELLANT**
Through: Mr. Ajay Vohra with Ms. Kavita Jha, Mr. Somnath Shukla and Ms. Akansha Aggarwal, Advocates.

VERSUS

**COMMISSIONER OF INCOME TAX . . . RESPONDENT**
Through : Mr. Sanjeev Sabharwal, Ms. Prem Lata Bansal, Advocates.

**(2) ITA No.113 of 2009**

**M/S LOTUS TRANS TRAVELS P. LTD. . . . APPELLANT**
Through : Mr. Ajay Vohra with Ms. Kavita Jha, Mr. Somnath Shukla and Ms. Akansha Aggarwal, Advocates

VERSUS

**COMMISSIONER OF INCOME TAX . . .RESPONDENT**
Through: Mr. Sanjeev Sabharwal, Ms. Prem Lata Bansal, Advocates.

**(3) ITA No.466 of 2007**

**M/S LOTUS TRANS TRAVELS P. LTD. . . . APPELLANT**
Through : Mr. Ajay Vohra with Ms. Kavita Jha, Mr. Somnath Shukla and Ms. Akansha Aggarwal, Advocates

VERSUS

**COMMISSIONER OF INCOME TAX . . .RESPONDENT**
Through: Mr. Sanjeev Sabharwal, Ms. Prem Lata Bansal, Advocates

**(4) ITA No.616 of 2007**

**M/S LOTUS TRANS TRAVELS P. LTD. . . . APPELLANT**

Through : Mr. Ajay Vohra with Ms. Kavita Jha, Mr. Somnath Shukla and Ms. Akansha Aggarwal, Advocates

VERSUS

**COMMISSIONER OF INCOME TAX . . .RESPONDENT**

Through: Mr. Sanjeev Sabharwal, Ms. Prem Lata Bansal, Advocates.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**
**HON'BLE MR. JUSTICE SURESH KAIT**

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. All these appeals raise a common question of law in respect of the same assessee but pertaining to four different assessment years. That is the reason of filing four appeals which were heard together and are being disposed of by this judgment.

2. Appeals were admitted on the following substantial question of law:-

> "Whether the Income-Tax Appellate Tribunal was justified in law in holding that the interest on a fixed deposits in banks and another interest were not eligible for deduction under Section 80 HHD of the Income-Tax Act, 1961?"

3. The facts which are necessary for deciding the question of law may now be spelled out.

4. The appellant, a private limited company is a tour operator. is approved by the Department of Tourism, the prescribed authority for the purposes of Section of 80 HHD of the Income Tax Act (hereinafter referred to as the 'Act'). The appellant arranges tours primarily for Japanese tourists visiting the Buddhist Circuit in India. The appellant receives advances from the travelling group prior to the group landing in India, in order to make necessary arrangements for their stay, transportation etc. Advances received in foreign exchange are deposited by the appellant in bank (s) in India in short-term deposits on which interest has been earned by the appellant. The appellant claimed deduction under Section 80 HHD of the Act by apportioning the profits assessable under the head "profits and gains of business or profession" (including interest income) in the ratio of receipts in foreign exchange (excluding interest income) to total receipts of business. The income was shown as "other income" in the tax return. The Assessing Officer accepted the interest income, in the nature of business income assessable under the head "profits and gains of business or profession". He, however, held that since interest income was not derived from the business of providing services to foreign tourists, the same did not qualify for deduction under Section 80HHD of the Act.

5. The CIT (A) accepted the deduction as claimed by the appellant. On further appeal by the Revenue, the Tribunal, however, reversed the order of the CIT (A) and restored that of the Assessing officer holding that since interest income was not derived from the business of providing services to foreign tourists, the same could not

6. The submissions of Mr. Vohra was that "profits derived from services provided to foreign tourists" has to be quantified as per the statutory formula prescribed in sub-section (3), viz., by apportioning profits of the business as computed under the head "profits and gains of business or profession' in the ratio of receipts in convertible foreign exchange to total receipts of the business carried on by the assessee. The fictional/artificial formula provided in sub-section (3) mandates the manner in which the deduction admissible under Section (1) of Section 80HHD of the Act has to be computed. The formula admits of no deviation/brooks no interference. He referred to and relied upon the special Bench decision of the Tribunal in ***International Research Park Laboratories Ltd***. Vs. ***ACIT***, 212 ITR 1, which related to Section 80 HHC of the Act (before its amendment w.e.f. 1st April, 1992), where the Tribunal has held that deduction under the said section had to be computed only in accordance with the statutory/strait jacket formula in sub Section (3). Mr. Vohra submitted that this reasoning of the Tribunal is approved by the Supreme Court in the case of ***P.R. Prabhakar*** Vs. ***CIT***. 284, ITR 548. He also referred to another decision of Supreme Court in the case of ***Baby Marine Exports***, 290 ITR 323 wherein the Court reiterated the position of law that deduction under Section 80 HHC had to be quantified with reference to profits computed under the head "profits and gains of business or profession", even though not strictly derived from export. In that case, it was held that export premium received by supporting manufacturer for sale of goods to Export House formed part of business profits and consequently

deduction under Section 80HHC of the Act was admissible wi reference thereto.

7. According to Mr. Vohra, the principle of law discernible from the aforesaid judgments, rendered in the context of Section 80HHC is equally applicable while interpreting Section 80HHC of the Act, which is identically worded and was introduced with the same legislative intent of encouraging earning of precious foreign exchange. In that view of the matter, in the respectful submission of the appellant, the interest income accepted and assessed as "profits and gains of business or profession", must necessarily enter the computation of deduction under section 80HHD of the Act, in terms of the statutory formula contained in Section (3) of the said Section. It needs to be appreciated that the formula is universally applicable and cuts both ways: it may hurt some assessees while causing unintended benefits to some others. The consequences flowing from the application for the statutory formula, in the nature of deeming fiction, should not unnecessarily prejudice the mind of the Court and the statutory fiction enacted as part of law must be taken to its logical conclusion.

8. His concluding submission was that section 80 HHD being a beneficial provision, intended to boost earning precious foreign exchange for the country, must receive liberal construction (refer ***Bajaj Tempo Ltd***. Vs. ***CIT,*** 196 ITR 188, ***P.R. Prabhakar*** and ***CIT*** *Vs****. Baby Marine Exports***, (supra))

9. Learned counsel for the department, on the other hand, contended that since the interest income was not "derived from"

services rendered to foreign tourists, the same did not qualify f deduction under Section 80HHD of the Act. It was also argued that if the interest income was not in the nature of business income and it was described by the assessee itself as "other income" it had to be treated as "income from other sources" and, therefore, it could not qualify for deduction under Section 80 HHD of the Act on this ground also.

10. Section 80 HHD of the Act gives certain benefits to those engaged in the business of hotel or tour operator. If such assessees make earnings in convertible foreign exchange than to the extent of those earnings deduction is allowed in computing the total income of the assessee in the manner specified in said provision. To qualify for this deduction it is the pre-condition that the profits derived by such assessee are "from services provided to foreign tourists". As mentioned above, the assessee is a Tour Operator. Its earnings are from Japanese tourists visiting the Buddhist circuit in India. Those earnings are in convertible foreign exchange. It is not in dispute that the assessee is entitled to deduction on such income. However, the assessee also wants interest earned on advances received in foreign exchange by making deposits in banks in India as short term deposits. Whether this interest would qualify as "profits derived from services provided to foreign tourists", is the question. The entire matter has to be examined from this angle leaving aside the technical jargons and legal luances.

11. The expression "derived from" has come up for interpretation in the case of ***Commissioner of Income Tax*** *Vs.* ***Sterling Foods,***

pronounced by the Supreme Court that there has to be a dire nexus between the profits and gains and the industrial undertaking. This view was reiterated by the Apex Court in ***Hindustan Liver Ltd***. Vs. ***CIT***, 239 ITR 297. In a recent judgment pronounced by the Supreme court in the case of ***Liberty India*** Vs. ***Commissioner of Income Tax*** [317 ITR 218], the principle is revisited in a more lucid manner. The Court reiterated the distinction between the expression "derived from" and considered the expression "derived from" in contra distinction the term "attributable to" and held that the connotation of the words "derived from " is narrower as compared to that of the words "attributable to". By using the expression "derived from", Parliament intended to cover sources not beyond the first degree. The Apex Court further opined that on analysis of Sections 80IA and 80IB, it becomes clear that any industrial undertaking which becomes eligible on satisfying sub-Section (2) would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial undertaking after the specified date. Apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of the profits. This is the importance of the words "derived from an industrial undertaking" as against "profits attributable to an industrial undertaking". On this principle, the Court held that DEPB/Duty drawback incentives which flow from the scheme framed by the Central Government or from the provisions of Customs Act, 1962 cannot be treated as incentive profits from eligible business under Section 80IB of the Act.

12. If one has regard to the aforesaid pronouncement of the Ap Court, attributing the restricted meaning to the word “derived from”, the answer to the question before us becomes too obvious. The interest income is not derived from the foreign tourists. It is the deposit which is made of the advances received from those foreign tourists which is kept in the bank account and interest is received there from. Such an interest cannot be treated to be derived from the services provided to the foreign tourists. This interest income is not the result of services provided to those foreign tourists. Rather, further income is earned from the income generated from the services provided to those foreign tourists which source obviously becomes beyond the first degree. There is another difficulty in the way of the assessee. Such profit derived from “services provided to foreign tourists” should be in convertible foreign exchange income in question is received from banks in India in Indian currency and not in foreign exchange. By no stretch of imagination, the assessee can take benefit thereof for the purpose of Section 80HHD of the Act.

13. We, therefore, answer the question in favour of the Revenue and against the assessee. As a result, these appeals are dismissed.

**(A.K. SIKRI)**
**JUDGE**

**(SURESH KAIT)**
**JUDGE**

DECEMBER 24, 2010
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