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

+ **ITA NO. 300/2002**

% **Date of Decision : 18th November, 2011.**

CIT Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

JV ELECTRONICS PVT LTD Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers 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?

SANJIV KHANNA,J: (ORAL)

By order dated 21st January, 2003 the following substantial question of law was framed :

“Whether the Tribunal was correct in law in holding that the income earned by Assessee by way of rent and interest was



eligible for relief under Section 80 HHC of the Income Tax Act, 1961?”

2. The respondent is a company and the assessment year involved is 1989-90. The respondent during the relevant assessment year was entitled to deduction under Section 80HHC of the Income Tax Act, 1961 (Act, for short). However, while computing the said deduction the respondent had included and treated the rent received, being Rs.1,03,363/-, and interest of Rs.1,76,983/-, as income from profits and gains from business, which is eligible for deduction under the said Section.

3. The Assessing Officer in his order dated 30.11.1990 observed that the interest was payable by sundry debtors, Haryana State Electricity Board, on bonds issued by IDBI, on fixed deposits and on account of income tax refund. The fixed deposits had been issued and obtained out of profits earned in the earlier years. The Assessing Officer held that the aforesaid interest cannot be treated as business income and cannot be included for computing the deduction under Section 80HHC. He also rejected the contention that the interest earned should be reduced from interest paid. The Assessing Officer further held that the rent earned should be assessed under the head “income from house property” and cannot be treated as business income.



4. The assessee succeeded in the first appeal and it was held that interest income as well as rent received had to be computed and included for purposes of claiming deduction under Section 80HHC.

5. The Revenue preferred further appeal, which has been dismissed by the impugned order passed by the tribunal dated 8.4.2002, inter alia, recording as under :

“9. We have examined the rival submissions. The company had completed construction of the factory building in 1983. Due to sluggish market condition some of the factory’s space became surplus. In order to exploit the same commercially and to prevent deterioration by complete non usage of a part of the industrial space was let out temporarily. There was no intention to part with the business asset. Even after such letting out, the said space continued to be used for industrial purposes as a factory. In view of the decision of the Supreme Court in Vikram Cotton Mills, 169 ITR 597 we uphold the decision of the CIT (A) in allowing deduction u/s 80HHC on rental income for the reason that it was part and parcel of the business.

10. Regarding interest income from fixed deposits, the assessee company has retained these profits earned in the normal course of business for the betterment and improvement of the business. These funds have also been utilized for over covering the insecurity due to market conditions and also to combat technological obsolescence. The assessee has correctly relied on the judgment of the Delhi High Court in the case of Snam Progetti S P A where it was held that if at any time the assessee had spare funds and it preferred not to keep the same idle but make a deposit in the bank which gives it such income, then such income is



business income. Following the decision of the Special Bench in the case of M/s. Pearl Polymers in 80 ITD I we hold that the interest income from fixed deposits was income derived from the industrial undertaking. Accordingly we uphold the order of CIT (A) who held that interest income from fixed deposits generated out of earlier profit and retained for the purpose of business was also business income and, therefore, entitled to deduction u/s 80 HHC of the I.T. Act. Accordingly we dismiss revenue's first ground of appeal.”

11. We have heard Mr. Sanjeev Sabharwal, ld. sr. standing counsel for the appellant-revenue. There is no appearance on the part of the respondent-assessee.

12. Rent received is specifically taxable under the head ‘income from house property’. This is a specific heading for taxation of the rental income. It is not disputed and denied that the respondent-assessee had rented out the factory building. It is not material and relevant whether the factory building was a business asset or there was no intention to part or sell the same. There can be a number of reasons as to why an assessee is not able to use an immovable property and has to rent it out to the tenant and earn income. In the present case, it is not the case of the assessee that the immovable property was stock in trade, but as the assessee was not able to sell the same for some reason and therefore had temporarily given the property on rent. The question is whether the assessee was carrying on business, i.e., adventure in the nature of trade, commerce of manufacture. The answer is emphatic no. Mere fact that the respondent-assessee did not have any intention to part with the business asset, does



not show and mean that the rent earned by the respondent-assessee was taxable under the head 'business income'. After the property was given on rent, the tenant may have used the property for industrial purpose, but this will not determine the heading under which rent received is taxable in the hands of the respondent. It is admitted that the respondent-assessee was owner of the property. In these circumstances, the rental income has to be taxed under the head 'income from house property'. In this connection we may reproduce the observations of the Supreme Court in **Commissioner of Income Tax Vs. Chugandas & Co.** [1965] 55 ITR 17 (SC) wherein it has been observed as under :

“It must, therefore, be held that even if an item of income is earned in the course of carrying on a business, it will not necessarily fall within the head "profits and gains of business" within the meaning of section 10 read with section 6(iv). If securities constitute stock-in-trade of the business of an assessee, interest received from those securities will for the purpose of determining the taxable income be shown under the head "interest on securities" under section 8 read with section 6(ii) of the Act. Similarly, dividends from shares will be shown under section 12(1A) and not under section 10. If an assessee carries on business of purchasing and selling buildings, the profits and gains earned by transactions in buildings will be shown under section 10, but income received from the buildings so long as they are owned by the assessee will be shown under section 9 read with section 6(iii). Income earned by an assessee carrying on business will in each case be broken up, and taxable income under the head "profits and gains of business" will be that amount alone which is earned in the business, and does not fall under any other specific head.”



13. Reliance placed by the tribunal on the decision of the Supreme Court in **CIT v. Vikram Cotton Mills** [1988] 169 ITR 597 is inappropriate and not apposite. In the said case the income had been earned by the assessee from lease of plant and machinery and the question was whether the said income could be treated as business income.

14. On the second question also, the issue is covered against the assessee by decision of this Court in **Commissioner of Income Tax Vs. Shri Ram Honda Power Equip** (2007) 289 ITR 475 (Delhi). In this case it has been observed:-

“35. Turning to the submissions in the present cases, as regards the first of the categories, viz., the parking of surplus funds, there should be no difficulty at all. In view of the large number of the decisions of the hon’ble Supreme Court in the context of section 56 and section 57 and those of the Kerala High Court in the context of section 80HHC itself, we are unable to accept the contention of the assessee based on Snam Proghetti [1981] 132 ITR 70 (Delhi) that interest earned on parked surplus funds should qualify as business income. Clearly, Snam Proghetti [1981] 132 ITR 70 (Delhi) was not rendered in the context of section 80HHC and cannot but be confined to the facts of that case. Circular No. 564, dated July 5, 1990 (see [1990] 184 ITR (St.) 137), can also not help in interpreting section 80HHC which is a “stand alone” provision. We are, therefore, of the view that where surplus funds are parked with the bank and interest is earned thereon it can only be categorised as income from other sources. This receipt



merits separate treatment under section 56 of the Act which is outside the ring of profit and gains from business and profession. It goes entirely out of the reckoning for the purposes of section 80HHC. To give effect to this position, the Assessing Officer while computing profits of the export business will have to remove from the debit side of the profit and loss account the corresponding interest expenditure that has been “laid out” to earn such income from other sources. Otherwise this will depress the profits by an amount which is out of the reckoning of section 80HHC, a consequence not intended to be brought about.

36. The other category is where the exporter is required to mandatorily keep monies in fixed deposit in order to avail of credit facility for the export business. The argument on behalf of the assessee is that but for such a stipulation by the bank there was no need for the exporter to keep the money in fixed deposit and therefore the income earned from such fixed deposits bears a direct nexus to the business activity itself. Given the repeated affirmation by the hon’ble Supreme Court of three judgments of the Kerala High Court on the same issue, we are inclined to follow the view expressed by the Kerala High Court on each of these occasions. We accordingly hold that interest earned on fixed deposits for the purposes of availing of credit facilities from the bank, does not have an immediate nexus with the export business and therefore has to necessarily be treated as income from other sources and not business income. Question (a) and issue (i) are answered accordingly.”



15. Accordingly, the question of law mentioned above is answered in negative i.e. in favour of the Revenue and against the respondent-assessee. The appeal is disposed of. No order as to costs.

SANJIV KHANNA, J

R.V.EASWAR, J

NOVEMBER 18, 2011

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