



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.05.2013

+ **ITA 21/2013 & ITA 20/2013**

COMMISSIONER OF INCOME TAX-(C)-III ... Appellant

versus

FLEX FOODS LTD ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr N.P. Sahni

For the Respondent : Mr M.P. Rastogi with Mr K.N. Ahuja

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These appeals by the revenue are in respect of the assessment years 2003-04 and 2004-05 and arise out of the common order passed by the Income Tax Appellate Tribunal on 17.04.2012 in ITA Nos. 4880-4881/Del/2011, respectively. Limited notice had been issued in this matter on the previous occasion. The only issue sought to be raised in the present appeals relate to the submissions made by the learned counsel for the appellant/revenue that miscellaneous income and interest income should have been reduced while computing the deduction of eligible profits under Section 80HHC which would also be the same amount for the purposes of Section 115JB of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act')

2. We have heard the counsel for the parties at length. There appears to be a misunderstanding on the part of the revenue. It is abundantly clear that for



the purposes of computing the profits derived from the export of goods as referred to in Section 80HHC, the same has to be computed under sub-section (3) or sub-section (3A) of Section 80HHC. In the present case, clause (a) of sub-section (3) of Section 80HHC would be applicable. Therefore, the profits derived from exports would have to be computed by multiplying the profits of business with the ratio of export turnover to total turnover. Or, in other words:-

$$\text{Profits derived from Exports} = \text{Profits of business} \times \frac{\text{Export turnover}}{\text{Total Turnover}}$$

The profits of business have to be computed in the manner given in Explanation (baa) after sub-section (4) of Section 80HHC. The contention of the revenue is that in computing the deduction under section 80HHC, the same should have been reduced by the extent of miscellaneous income and interest income as the same cannot be considered to be part of export profits. This is where the misunderstanding on the part of the revenue lies. The so called miscellaneous income and interest income, in the present case, have never been regarded as part of the export turnover. They constitute part of the profits of business. The Assessing Officer, in the present case, has accepted the fact that the miscellaneous income and the interest income were part of the business income of the assessee. Once that is accepted, they would constitute part of the profits of business, of course, to a limited extent as provided in Explanation (baa) referred to above. That is exactly what has been done by the Assessing Officer as would be apparent from the computation, which we are reproducing herein below:-

“Subject to these observations, the total income of the assessee is assessed as follows”-



Business income as declared by the assessee	9,23,71,923/-
Add: On account of foreign exchange loss as discussed above	<u>4,95,736/-</u>
	9,28,67,659/-
Less: B/f losses/depreciation	<u>7,90,26,260/-</u>
	1,38,41,399/-
Less: <u>Deduction u/s 80HHC as discussed above.</u>	
Profit as above	1,38,41,399/-
Less: 90% of other income of ₹ 29,83,818/-	<u>26,85,436/-</u>
	1,11,55,963/-
Deduction u/s 80HHC = Profit X Exportturnover/Total turnover	
= 1,11,55,963 X 8,18,29,489/25,03,74,251	
= 81,01,803/-	
30% of above = 24,30,541/-	<u>24,30,541/-</u>
	1,14,10,858/-
<u>Computation of book profit u/s 115JB</u>	
Book profit as taken in the computation of income	2,21,01,867/-
Add: Claim for deduction u/s 80HHC not allowed as per discussion (<i>supra</i>)	<u>6,37,08,462/-</u>
Book profit u/s 115JB	8,58,10,329/-
Rounded off u/s 288A	8,58,10,330/-"

3. In respect of the above computation, there was no grievance on the part of the assessee upto the point the deduction under Section 80HHC has been computed at ₹ 81,01,803/-. The grievance of the respondent/assessee was only with regard to limiting the deductions to 30% of the above figure of ₹ 81,01,803/- by invoking Section 80HHC (1B) while computing the book profit under Section 115JB. That issue is no longer in dispute in view of the decision of the Supreme Court in the case of *Ajanta Pharma v. CIT: 327 ITR 305 (SC)*, where it was made clear that 100% of the deduction would be allowable. Therefore, the Assessing Officer was wrong in allowing only 30% of the deduction allowable under Section 80HHC for the purposes of computing book profits under Section 115JB.



4. It is, therefore, apparent that with regard to the issue of miscellaneous income and interest income, there was no dispute with the Assessing Officer's treatment of the same as being part of business income. Consequently, the contention sought to be raised on behalf of the revenue that the miscellaneous income and interest income should be excluded does not arise at all. This is so because the assessing officer had treated the same as part of business income of the assessee.

5. As such no question of law, what to speak of a substantial question of law, arises for our consideration.

6. The appeals are dismissed.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

MAY 10, 2013
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