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

Date of decision: 25th November, 2014

+ **ITA No. 54/2003**

COMMISSIONER OF INCOME TAX IV Appellant
Through Mr. Kamal Sawhney, Sr. Standing
Counsel with Mr. Sanjay Kumar, Jr. Standing
Counsel.

versus

M/S INTERARCH BUILDING PRODUCT Respondent
Through Mr. M.P. Rastogi and Mr. K.N. Ahuja,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) pertains to assessment year 1994-95 and was admitted for hearing by order dated 10th May, 2005, on the following substantial question of law:-

“Whether the Income Tax Appellate Tribunal was justified in law in holding that service charges of Rs.2,20,500/- to be recovered from M/s Interach are to be included in the profits of industrial undertaking for computing deduction u/s 80-I of the Act (wrongly mentioned by the ITAT as u/s 80HHC)?”

2. It is not disputed that the respondent-assessee is entitled to claim deduction under Section 80-I of the Act. The respondent-assessee had



shared a common office with M/s. Interarch. Accordingly, they share the service charges in respect of the common office. An amount of Rs.2,20,500/- was received from M/s. Interarch and it is not the case of the Revenue that the said amount was not a part of the service charge payable by M/s. Interarch for using the common office. However, the Assessing Officer while computing deduction under Section 80-I of the Act excluded the said amount on the ground that it was not a part of industrial activities and, therefore, should be excluded. The aforesaid reasoning was affirmed in the first appellate order passed by the Commissioner of Income Tax (Appeals). However, in the second appeal before the Income Tax Appellate Tribunal, the plea of the assessee was accepted.

3. The Tribunal has rightly and correctly recorded that the Assessing Officer was bound to determine the profits of the industrial undertaking and while computing the profit, the receipts of the industrial undertaking and the expenditure incurred for carrying out the business of the industrial undertaking have to be taken into consideration. Thus, Rs.2,20,500/- would not form part of the income earned i.e. income derived by the industrial undertaking and equally Rs.2,20,500/-, which was the service charge or the expenditure incurred by M/s. Interarch, would not be treated as an expenditure incurred by the assessee. The expenditure incurred by M/s. Interarch



was relating to their business. Only the expenditure relating to t
industrial undertaking would be deducted. The expenditure incurred
by the assessee would not, therefore, include the expenditure incurred
for the business of M/s. Interarch and was reimbursed to the assessee.
The fact that the expenditure related to and was payable by M/s.
Interarch is not under challenge. It is not the case of the revenue that
the amount paid, exceeded or was more than the expenditure actually
incurred by M/s. Interarch and had the effect of reducing the
expenditure incurred by the respondent-assessee and thereby increased
the profits eligible for deduction under Section 80-I of the Act.

4. In view of the aforesaid position, we do not find any merit in the
present appeal and the same is dismissed. The substantial question of
law is answered in favour of the respondent-assessee and against the
appellant-Revenue. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

NOVEMBER 25, 2014
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