



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 30.11.2011

+ **ITA No.1041/2005**

COMMISSIONER OF INCOME TAX DEL Appellant

versus

M/S MARUTI UDYOG LTD Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr S.Ganesh Sr. Advocate with Mr S.Sukumaran,
Mr Anand Sukumar & Mr Bhupesh Kumar Pathak

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

BADAR DURREZ AHMED, J (ORAL)

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (herein referred to as the said Act) filed on behalf of the Revenue in respect of the assessment year 1992-1993. The present appeal arises out of the Income Tax Appellate Tribunal's order/judgment dated 30.11.2004 delivered/passed in ITA No. 2812/Del/1996 and ITA No. 2853/Del/1996 which were appeals filed by the Assessee and the Revenue, respectively. One of the common issues which arose in the appeals before the Tribunal was whether interest income earned by the assessee could be assessed under



the head “income from other sources” or under the head “profits and gains of business or profession”. Another issue was with regard to the netting of interest in the context of clause (baa) of the Explanation below section 80HHC(4A) of the said Act.

2. The Tribunal came to the conclusion that the question of interest on inter- corporate deposits, interest on securities and interest on bank deposits ought to be sent back for fresh adjudication. The Tribunal further held with regard to the interpretation of clause (baa) of Explanation below Section 80HHC(4A) of the said Act as under:-

“Ground No.3.2 in assessee’s appeal relates to the working of profits of business under clause (baa) of the Explanation below Section 80HHC(4A). The stand of the assessee is that exclusion of 90% of interest income should be against net interest i.e. after adjusting the interest paid while the stand of the revenue is that exclusion of 90% should be gross interest. This issue now stands covered by the decision of Special bench in the case of Lalsons Enterprises, 89 ITD 25 where in it has been held that 90% exclusion should be of net interest if there is nexus between the interest received and interest paid. This aspect requires verification. Therefore, the order of the CIT(A) is set aside on this aspect of the issue and the matter is restored to the file of AO for fresh computation in accordance with the decision of the Special bench mentioned above.”

3. The only issue before us is the question of law which was framed by virtue of the order dated 24.04.2006 which reads as under:-



“Whether the Tribunal is right in law in holding that the assessee is entitled to reduce interest paid from interest received under clause (baa) to Explanation below Section 80HHC(4) of the Income Tax Act?”

4. We are no longer required to deliberate in detail on the above question inasmuch as the same has been answered by this Court in **CIT v. Shriram Honda Power Equip: (2007) 289 ITR 475 (Del)**. In view of the said decision, we would have to hold that the Tribunal was right in law holding that the assessee is entitled to reduce interest paid on interest received under clause (baa) to Explanation below Section 80HHC(4A) of the said Act. We may also point out that the decision in **Shriram Honda** (*supra*) has been followed by this Court in the case of **CIT v. Shahi Export House: (2010) 195 Taxman 163(Del)** and **Britika Exports P.Ltd. v. CIT-VIII** in ITA No.276/2002 decided on 16.11.2011.

5. It is clear from the above that the Tribunal has remitted the matter to the Assessing Officer for computation in terms of the directions given therein. We have upheld the decision of the Tribunal in this regard in view of the settled position as indicated above. It is obvious that the Assessing Officer while conducting the exercise would do so in accordance with the decisions of this Court.



6. In view of the answer given by us to the question formulated, the appeal is dismissed with the aforesaid observations. Pending applications, if any, stand disposed of.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

NOVEMBER 30, 2011
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