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

% *Date of decision: 24.07.2023*

+ **ITA 531/2022**

UNIPATCH RUBBER LTD. Appellant

Through: Mr S. Krishnan, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX..... Respondent

Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Pratishta
Chaudhary and Mr Aditya Gupta,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

ORDER

% **24.07.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2014-15.
2. *Via* this appeal, the appellant/assessee seeks to challenge the order dated 31.05.2022, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The appeal, according to Mr S. Krishnan, raises a short issue, which is: whether interest received on a fixed deposit, created pursuant to an order of the court to secure payment of entry tax, is eligible for deduction under Section 80IC of the Income Tax Act, 1961 [in short, "the Act"].
4. The Tribunal *via* the impugned order has ruled against the appellant/assessee by holding that such income cannot be categorized on



“derived” from an eligible business.

5. The record shows that the appellant/assessee, pursuant to the interim order of the High Court of Himachal Pradesh dated 16.03.2011 passed in CWP No. 1216/2011, was required to pay 1/3rd of the disputed entry tax, and secure the remaining amount i.e., 2/3rd of the liability by furnishing security.

5.1 This aforementioned interim order was passed by the High Court of Himachal Pradesh during the pendency of the writ petition concerning a challenge to the *vires* of the Himachal Pradesh Tax on entry of Goods into the Local Area Act, 2010 [in short, “2010 Act”].

5.2 This interim order was passed in line with that which the Supreme Court, evidently, passed in SLP(C) 14454-14778/2008, titled *State of Orissa and Ors. v. M/s Reliance Industries Ltd. and Ors.*

6. There is no dispute about the fact that the appellant/assessee created the fixed deposits to secure unpaid disputed tax liability, which resulted in the accrual of interest. The appellant/assessee sought deduction under Section 80IC by first treating the interest, in the first instance, as part of the income derived from the eligible business.

7. Mr S. Krishnan, who appears on behalf of the appellant/assessee, submits that the Assessing Officer (AO) could not have, on the one hand, accepted the treatment of interest as business income, and then gone on to deny deduction under Section 80IC.

7.1 It is Mr Krishnan’s stand that if deduction under Section 80IC had to be denied, then, the interest ought to have been treated as “income from other sources.”

8. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that, although the characterization of



the income may be incorrect, it would not affect the tax burden imposed on the appellant/assessee, even if the view taken by the Tribunal, that deduction under Section 80IC is not available since it is not income derived from eligible business, is sustained.

9. Having heard the learned counsels for the parties, we tend to agree with Mr Chawla. According to us, the interest accrued on fixed deposits, furnished to secure payment of liability towards entry tax, cannot, by any stretch of imagination, be construed as income derived from eligible business i.e., profit and gains derived by an undertaking or an enterprise which is relatable to manufacturing or production of articles. In our view, it is not income *qua* which deduction under Section 80IC can be claimed by the appellant/assessee.

10. Insofar as Mr Krishnan's submission is concerned that the AO could not have, in such circumstances, treated the interest accrued on fixed deposit as business income, is a submission which has merit. However, that said, this would not impact the tax burden insofar as the appellant/assessee is concerned; what would change, perhaps, would only be the head under which such income is made amenable to tax.

11. Therefore, for the foregoing reasons, we are not inclined to interfere with the impugned order passed by the Tribunal. According to us, no substantial question of law arises for our consideration.

12. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 24, 2023 / tr