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

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\+ **ITA 392/2015**

PRINCIPAL COMMISSIONER OF INCOME TAX – 21 ..... Appellant

Through: Mr Sanjay Kumar and Mr Dileep Shivpuri, Advocates.

versus

UNIVERSAL PRECISION SCREWS ..... Respondent

Through: Mr Ved Jain and Mr Pranjal Srivastava, Advocates.

CORAM:
DR. JUSTICE S. MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

O R D E R

% 06.10.2015

DR. S. MURALIDHAR, J

1. This appeal by the Revenue is directed against the order dated 7th January, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.2034/Del/2013 for Assessment Year ('AY') 2009-10.

2. The Assessee is engaged in the manufacture and export of Fasteners. It is a 100 per cent export oriented unit. It filed a return of income for AY 2009-10 on 23rd September, 2009 declaring a total income of Rs.1,71,91,590/-. Thereafter, it filed a revised return revising its total income to

Rs.1,59,35,040/-. The Assessee claimed deduction under Section 10B (1) of the Act.

3. In the assessment order dated 19th December, 2011, the AO noted that the Assessee had included as part of its income scrap sales of Rs.31,84,869/-, exchange rate difference amounting to Rs.32,35,700/- and interest received on Fixed Deposit Receipts (FDRs) amounting to Rs.1,60,11,996/-. The AO was of the view that only those profits and gains would be exempted under Section 10B which had direct and proximate relationship with activities relatable to an EOU. It was held that interest from FDRs was not income derived from the undertaking. The AO included the exchange rate difference in the domestic sales. The scrap sale was treated as part of the domestic sale. The AO recomputed the deduction under Section 10B of the Act on the above basis.

4. In the appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) [CIT(A)] by order dated 28th February 2013 concurred with the AO as regards the computation of the deduction under Section 10B of the Act.

5. In allowing the Assessee's appeal by the impugned order, the ITAT held that in terms of the judgment of the Supreme Court in ***CIT v. Punjab Stainless Steel Industries (2014) 364 ITR 144 (SC)*** sale of scrap is not includable in the total turnover since the Assessee was not engaged in the business of scrap. Consequently, the impugned orders of the CIT (A) and the AO treating the scrap amount as part of the domestic turnover was set

aside.

6. On the above aspect, the Court finds no error committed by the ITAT as the legal position has been made explicit by the decision of the Supreme Court in ***CIT v. Punjab Stainless Steel Industries*** *(supra).* Consequently, the Court declines to frame a question on this issue.

7. As regards the exchange rate fluctuation, the ITAT referred to the decision of the Bombay High Court in ***CIT v. Gem Plus Jewellery India Ltd. (2011) 330 ITR 175 (Bom.)*** which held that foreign exchange fluctuations realized within the stipulated period forms part of the sale proceeds and is directly related to the export activates. It was, accordingly, held that this should be treated as income derived from export activities. The above decision of the Bombay High Court was in the context of Section 10A of the Act. The learned counsel for the Assessee has also referred to the decision of the Madras High Court in ***CIT v. M/s Pentasoft Technologies Ltd. (2012) 342 ITR 578 (Mad.)*** where again that High Court has answered the question likewise and in favour of the Assessee. Since the provisions of Section 10A and 10B are more or less similar, the ITAT rightly held that for the purposes of Section 10B, the foreign exchange fluctuation has to be considered as part of the export turnover.

8. Again, on the above aspect, the Court finds no error committed by the ITAT since its decision on this issue is based on the correct legal position as explained in the above decisions.

9. On the question of interest on the FDRs, the ITAT has referred to Section 10B (4) which states that for the purposes of Section 10B (1), the profits derived from export of articles or things or computer software "shall be the amount which bears to the profits of the business of the undertaking", the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.' As noted by this Court in ***CIT v. Hritnik Exports Pvt. Ltd.*** (decision dated 13th November, 2014 in ITA No.219 & 239 of 2014), Section 10B (4) mandates the application of the formula for determining the profits derived from exports for the purposes of Section 10B(1). In other words, the formula would read thus:

$$\text{Profits derived from export} = \text{profits of the business of the undertaking} \times \frac{\text{export turnover}}{\text{total turnover}}$$

9A. In terms of the above formula, the question that would arise is whether the interest on the FDRs could form part of the 'profits of the business of the undertaking'. The attention of the Court has been drawn to the decision of the Karnataka High Court in ***CIT v. Motorola India Electronics Pvt. Ltd. (2014) 46 Taxmann.com 167 (Kar.)*** which held that there was a direct nexus between the interest received from the FDRs created by a similarly placed Assessee from the amounts borrowed by it. The High Court approved the order of the ITAT in that case which held that the entire profits of the business of the undertaking should be taken into consideration while computing the eligible deduction under Section 10B of the Act by

applying the mandatory formula.

10. In the present case, the Assessee has stated that the interest on FDRs was received on "margin kept in the bank for utilization of letter of credit and bank guarantee limits". In those circumstances, the decision of the ITAT that such interest bears the requisite characteristic of business income and has nexus to the business activities of the Assessee cannot be faulted. In other words, interest earned on the FDRs would form part of the "profits of the business of the undertaking" for the purposes of computation of the profits derived from export by applying formula under Section 10B(4) of the Act.

11. Consequently, no substantial question of law arises on this aspect as well.

12. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 6, 2015
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