

HIGH COURT OF PUNJAB AND HARYANA
Commissioner of Income-tax (Central), Ludhiana

v.

Paliwal Exports

AJAY KUMAR MITTAL AND GURMEET SINGH SANDHAWALIA, JJ.
IT APPEAL NO. 88 OF 2008
OCTOBER 9, 2012

ORDER

Ajay Kumar Mittal, J. - This order shall dispose of ITA Nos.88 and 105 of 2008 as according to learned counsel for the parties, identical question of law and facts are involved in both the cases. However, the facts are being extracted from ITA No.88 of 2008.

2. ITA No.88 of 2008 has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.6.2007, Annexure A.6 passed by the Income Tax Appellate Tribunal, Delhi Bench 'B', New Delhi (for brevity "the Tribunal") in ITA No.2249/Del/2006 for the assessment year 1997-98, claiming following substantial question of law:—

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was correct in law in holding that 90% of net interest has to be taken into account while computing deduction under Section 80HHC as per Explanation (baa) to Section 80HHC (4C) ignoring the decision of the Jurisdictional High Court i.e. 248 ITR 220 (P&H)(Sic)?"

3. Briefly, the facts as narrated in ITA No.88 of 2008 may be noticed. The respondent-assessee is a firm, carrying on export business. For the assessment year 1997-98, the Assessing Officer in his assessment order dated 26.2.1999, Annexure A.1 held that as per Clause (baa) of Explanation to Section 80HHC of the Act, 90% of the gross amount of interest Income of Rs. 7,89,829/- was deductible from the business profits of the assessee for the purpose of calculation of deduction under Section 80HHC of the Act instead of net interest debited to the P&L account by the assessee. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 13.10.2000, Annexure A.2, the appeal was allowed and the order passed by the Assessing Officer dated 26.2.1999 was set aside. Not satisfied with the order, the department filed an appeal before the Tribunal. Vide order dated 26.3.2004, Annexure A.3, the matter was remanded by the Tribunal to the Assessing officer to decide it afresh. Vide order dated 16.12.2005, Annexure A.4, the Assessing Officer after examining the matter held that the assessee had neither been able to furnish the evidence that the borrowed amounts were transferred to FDRs accounts nor to show that any expense was incurred to earn the interest Income from bank. The Assessing Officer concluded that the gross amount of Rs. 7,89,829/- was rightly deducted from the business profit while calculating deduction under Section 80HHC of the Act. Aggrieved by the order, the assessee filed appeal before the CIT(A). Vide order dated 7.3.2006, Annexure A.5, the CIT(A) allowed the deduction under Section 80HHC of the Act as claimed by the assessee holding that 90% of net interest has to be deducted from profits of the business while working out deduction under Section 80HHC of the Act. The department went in appeal against the order passed by the CIT(A). Vide order dated 8.6.2007, Annexure A.6, the Tribunal dismissed the appeal. Hence the present appeals by the revenue.

4. We have heard learned counsel for the parties and perused the record.

5. The issue involved herein is whether it is the net interest which has to be taken into account while computing deduction under Section 80HHC of the Act as per Explanation (baa) to Section 80HHC(4C) of

the Act. The Hon'ble Supreme Court in *ACG Associated Capsules (P.) Ltd. v. CIT* held as under:—

"26....that ninety per cent of not the gross interest but only the net interest, which has been included in the profits of the business of the assessee as computed under the head 'Profits and Gains of Business or Profession' is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business. Since the view taken by the High Court in the impugned order is consistent..."

6. Further, the Tribunal while accepting the plea of the assessee had recorded as under:—

"12. It means that in the proceedings under consideration before the Tribunal, we are simply required to resolve whether the CIT(A) was justified in coming to a conclusion that the borrowed amounts on which interest has been paid were actually used in making the FDRs on which interest income has been received. On examining the order of CIT(A), we find that the CIT(A) after examining the details of the deposits as well as bank certificate filed by the assessee has recorded a specific finding that the borrowed amounts on which interest was paid were used for making the FDRs on which interest was earned by the assessee, hence, there was a nexus between the two and therefore 90% of the net interest was excludible for the purpose of computing the profits of business for the purposes of Section 80HHC of the Act. This finding of fact recorded by the CIT(A) could not be dislodged by the learned DR for the Revenue before us..."

7. A perusal of the aforesaid finding of the Tribunal shows that it is in conformity with the decision of the Apex Court in *ACG Associated Capsules Private Limited's case (supra)*.

8. Accordingly, the substantial question of law is answered against the revenue and in favour of the assessee. It is held that it is the net interest which has to be taken into account while computing deduction under Section 80HHC as per Explanation (baa) to Section 80HHC (4C) of the Act.

9. As a result, we do not find any merit in these appeals and the same are dismissed.

SUNIL

*In favour of assessee.

†Arising out of order of Tribunal in ITA No. 2249/Delhi/2006, dated 8-6-2007.