
(2009) 11 DEL CK 0264
In the Delhi High Court
Case No : IT Appeal No. 248 of 2009

Commissioner of Income Tax	Vs	APPELLANT
Advance Detergents Ltd.		RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Income Tax Act, 1961 — Section 80HHC, 80I, 80IA, 80IA(1), 80IA(5)

Citation : (2010) 228 CTR 356 : (2011) 339 ITR 81 : (2010) 188 TAXMAN 15

Hon'ble Judges : Siddharth Mridul, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; B.B. Bhagat, Amit Bhagat, Pulkit Gupta, Ajay Vohra, Kavita Jha, Akansha Aggarwal and Sriram Krishna, for the Respondent

Judgement

A.K. Sikri, J.

IT Appeal No. 248 of 2009

1. This appeal was admitted and heard on the following substantial question of law:

Whether the Tribunal was correct in law in holding that the interest earned by the assessee on late payment received from the customers is eligible for deduction u/s 80-IA of the IT Act, 1961 ?

2. This question has arisen for consideration under the following circumstances:

3. The assessee is an industrial undertaking. For the asst. yr. 1997-98, it filed its return declaring income as "nil". During the assessment proceedings, the AO noticed that the assessee had shown a sum of Rs. 12,60,540 under the head "Miscellaneous receipts" and had taken that amount into consideration while computing deductions u/s 80-IA of the IT Act, 1961 (hereinafter referred to as the "Act"). On being questioned, the explanation of the assessee was that this amount represented interest on late payment charges by the purchaser of the

goods, to whom the goods had been exported. The AO reduced this amount from the profits of the business for the purposes of computing deduction u/s 80-IA of the Act, treating the aforesaid income of Rs. 12,60,540 as "income from other sources" and not business income. View of the AO was that the interest receipts had not been earned by the assessee out of its manufacturing activities and it had no direct or immediate access with the industrial undertaking of the assessee.

4. Order of the AO was confirmed by the CIT(A). However, on further appeal preferred before the Tribunal, the appeal of the assessee has been allowed by the Tribunal by directing the AO to compute the deduction u/s 80-IA of the Act and treating the aforesaid income as business income. The Tribunal, for arriving at this conclusion, has referred to various judgments of different High Courts and different Benches of the Tribunal itself.

5. Section 80-I of the Act provides for a deduction from the profits and gains, of an amount equal to 20 per cent thereof in those cases where the gross total income of an assessee includes any profits and gains derived, inter alia, from an industrial undertaking. Sub-section (1), which is relevant for us, reads as under:

"80-I-(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel or the business of repairs to ocean-going vessels or other powered craft, to which this section applies, there shall, in accordance with and subject to the provision of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to twenty per cent thereof:

Provided, that in the case of an assessee, being a company, the provisions of this sub-section shall have effect in relation to profits and gains derived from an industrial undertaking or a ship or the business of a hotel as if for the words "twenty per cent", the words "twenty-five per cent" had been substituted.

It is clear from the bare reading of this provision that only such profits and gains which are derived from an industrial undertaking are to be taken into consideration for computing deduction equal to 20 per cent.

6. In this backdrop, the question for consideration before us is as to whether the interest received by the assessee on overdue payments from the customers is to be considered as profits and gains which are derived from an industrial undertaking.

7. As pointed out above, the Tribunal has referred to various judgments of the High Courts as well as other Benches of the Tribunal. We may, however, begin our discussions with the recent case decided by the Supreme Court in *Liberty India Vs. Commissioner of Income Tax*, in which it has discussed and explained the contents and scope of said provision in a very lucid manner. The interpretation of Section 80-IA and other sections in the said judgment would

provide sufficient guidelines to decide the question of law which has arisen for consideration in the present case.

8. In that case, the assessee was engaged in the manufacturing of fabrics out of yarns and also various textile items purchased from the market. It had claimed deduction u/s 80-IB of the Act on the increased profits of Rs. 22,70,056 as profit of the industrial undertaking on account of DEPB and duty drawback credited to the P&L a/c. The question which fell for consideration before the Supreme Court was as to whether profits from the DEPB and duty drawback scheme could be said to be profits derived from the business of industrial undertaking. It was in this context that the apex Court discussed the meaning of the words "derived from". Even before discussing the implication of the aforesaid words, the Court pointed out that though focus was on the analysis of Section 80-IB, the basic scheme of Sections 80-I, 80-IA and 80-IB remains the same. The Court was of the view that the words "derived from" are narrower in connotation as compared to the words "attributable to". Thus, by using the expression "derived from", the Parliament intended to cover sources not beyond the first degree. Accordingly, only such profits are to be computed as if such eligible business is the only source of income of the assessee. Therefore, the devices adopted to reduce or inflate the profits of the eligible business have got to be rejected in view of the overriding provisions of Sub-section (5) of Section 80-IA, which is required to be read into Section 80-IB because of common scheme of incentives in the form of deductions as contained in both the sections, which were linked to profits and not for investments. Giving this interpretation to the aforesaid provision the Court observed as under:

14. ...On analysis of Sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying Sub-section (2), would be entitled to deduction under Sub-section (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, Sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking".

9. Applying the principle in respect of DEPB benefits of duty drawback receipts, after explaining the said schemes the Court opined that those incomes would constitute independent source of income beyond the first degree nexus between profits of the industrial undertaking and, therefore, were not to be treated as profits derived from the business of industrial undertaking eligible for deduction u/s 80-IB of the Act.

10. We now proceed to determine the question posed before us applying the principle laid down by the Supreme Court in the aforesaid case.

11. The respondent assessee, which is an industrial undertaking, had supplied goods to its various customers which had been manufactured by it. Some of these customers did not make payment in time. The dues which were payable by

those buyers attracted interest on late payment charges. In this manner, ultimately, the payments which were received by the assessee against the supply of goods also included interest on overdue payments.

12. Precisely, this very issue came up for consideration before the Gujarat High Court in the case of *Nirma Industries Limited Vs. Deputy Commissioner of Income Tax*, That was also a case where interest was received by the assessee from the debtors for late payment of the sale proceeds and the question was as to whether this interest can be treated as the income derived from the business for the purpose of Section 80-I of the Act. Answering the question in favour of the assessee, the Gujarat High Court relied upon the judgment of the apex Court in the case of *Commissioner of Income Tax, Orissa Vs. Govinda Choudhury and Sons, Gosaninuagaon, Orissa*, in which case the Supreme Court had held that interest was of the same nature as other trading receipts in the following manner:

The assessee is a contractor. His business is to enter into contracts. In the course of the execution of these contracts, he has also to face disputes with the State Government and he has also to reckon with delays in payment of amounts that are due to him. If the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him. It would not be correct, as the Tribunal has held, to say that this interest is totally de hors the contract business carried on by the assessee. It is well settled that interest can be assessed under the head "Income from other sources" only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In our view, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the awards and treated as "income from other sources".

13. The Gujarat High Court approached the issue from another angle for arriving at the same conclusion. It observed that when the assessee enters into a contract for sale of its products it could either stipulate (a) that interest at the specified rate would be charged on the unpaid sale price and added to the outstanding till the point of time of realisation, or (b) that in case of delay the payment for sale of products worth Rs. 100 to carry the sale price of Rs. 102 for first month's delay, Rs. 104 for second month's delay, Rs. 106 for third month's delay and so on. If the contention of Revenue is accepted merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration (b) above, if the payment is described as sale price it would be profits derived from the industrial

undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale proceeds. In other words, this is a converse situation to offering of cash discount. Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds.

14. Thus, according to the Gujarat High Court, when interest is paid on delayed payment, it can be treated as higher sale price which is converse situation to offering of cash discount because the transaction remains the same and there is no distinction as to the source. Looking from this angle, the interest becomes part of the higher sale price and is clearly derived from the sales made and is not divorced therefrom. It is, thus, the direct result of the sale of goods and the income is derived from the business of industrial undertaking.

15. Same view is expressed by various other High Courts in the following judgments:

- (i) Phatela Cotgin Industries (P) Ltd. Vs. Commissioner of Income Tax,
- (ii) Commissioner of Income Tax Vs. Flender Macneill Gears Ltd.,
- (iii) Tata Sponge Iron Ltd. Vs. Commissioner of Income Tax,
- (iv) Commissioner of Income Tax Vs. Indo Matsushita Carbon Co. Ltd.,

16. There is no reason to depart from the aforesaid view taken consistently by various High Courts, which is in tune with the principle laid down by the Supreme Court in Liberty India (supra). We answer this question in favour of the assessee and against the Revenue.

IT Appeal Nos. 545 of 2006, IT Appeal No. 18 of 2007, IT Appeal No. 765 of 2007, IT Appeal No. 816 of 2007 & IT Appeal No. 796 of 2007

17. These appeals came up for hearing on 16th Nov., 2009. The question of law raised in IT Appeal No. 248 of 2009 was common to these appeals as well. Learned Counsel for the parties made additional submissions on the said question which has already been taken into consideration while deciding IT Appeal No. 248 of 2009. Most of the other questions stand covered in favour of the Revenue or the assessee, which position was accepted at the time of hearing.

Accordingly, we proceed to answer, the questions framed in these appeals one by one.

IT Appeal No. 816 of 2007

18. This appeal was admitted on the following three substantial questions of law:

1. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on interest received from trade

debtors and also on interest earned on FDRs ?

2. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on the amount of duty drawback and on the amount received by the assessee on sale of DEPB and QBAL licensees ?

3. Whether the Tribunal was correct in law in allowing deduction to the assessee u/s 80-IA of the IT Act, 1961 on the amount of notional credit of customs duty on goods imported for self-consumption ?

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction u/s 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Rishi Dev Batra Vs. Dr. (Mrs.) Anup Suri*

Insofar as the 2nd and 3rd questions are concerned, they are decided in favour of the Revenue and against the assessee following the judgment of the Supreme Court in *Liberty India (supra)*.

IT Appeal No. 545 of 2006

19. This appeal was admitted on the following question of law:

Whether the Tribunal was correct in law in holding that the assessee was entitled to reduce interest paid by it against interest received by it while calculating deduction u/s 80HHC r/w Explan. (baa) of the IT Act, 1961?

This question is answered in favour of the Revenue, in view of the judgment of this Court in *Shri Ram Honda Power Equip (supra)*.

IT Appeal No. 18 of 2007

20. The following questions of law have been framed for consideration:

1. Whether the Tribunal was correct in law in holding that the assessee was entitled to reduce interest paid by it against interest received by it while calculating deduction u/s 80HHC r/w Explan. (baa) of the IT Act, 1961 ?

2. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the Act on interest received from trade debtors and also on interest earned on FDRs ?

3. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the Act on the amount of Rs. 25,200 being duty drawback and amount of Rs. 26,64,455 received on sale of DEPB and QBAL licensees ?

The first question is answered in favour of the Revenue in the light of the judgment of this Court in *Shri Ram Honda Power Equip (supra)*. Insofar as the second question is concerned, the same is answered partly in favour of the

Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction u/s 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip (supra)*. The third question is answered in favour of the Revenue in view of the judgment in *Liberty India (supra)*.

IT Appeal No. 765 of 2007

21. The following questions arise for consideration in this appeal:

1. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on interest received from trade debtors and also on interest earned on FDRs ?
2. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on the amount of duty drawback and on the amount received by the assessee on sale of DEPB and QBAL licensees ?
3. Whether the Tribunal, was correct in law in allowing deduction to the assessee u/s 80-IA of the IT Act, 1961 on the amount of notional credit of customs duty on goods imported for self-consumption ?

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction u/s 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip (supra)*.

The second and third questions are answered in favour of the Revenue in view of the judgment in *Liberty India (supra)*.

IT Appeal No. 796 of 2007

22. The following substantial questions of law are framed for consideration:

1. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on interest received from trade debtors and also on interest earned on FDRs ?
2. Whether the Tribunal was correct in law in holding that the assessee is entitled to deduction u/s 80-IA of the IT Act, 1961 on the amount of duty drawback and on the amount received by the assessee on sale of DEPB and QBAL licensees ?
3. Whether the Tribunal was correct in law in allowing deduction to the assessee u/s 80-IA of the IT Act, 1961 on the amount of notional credit of customs duty on goods imported for self-consumption ?

The first question is answered partly in favour of the Revenue and partly in favour of the assessee holding that interest received from trade debtors would be entitled to deduction u/s 80-IA, but interest earned on FDRs would not be so entitled in view of the judgment of this Court in *Shri Ram Honda Power Equip*

(supra).

The second and third questions are answered in favour of the Revenue in view of the judgment in Liberty India (supra).