(2007) 01 DEL CK 0201

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Bharat Rasayan Ltd. RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Citation : (2008) 172 TAXMAN 338

Hon'ble Judges : Vikramajit Sen, J;Dr. S. Muralidhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By order dated 18-8-2006, after hearing counsel for both parties, the following only substantial question of law was framed for determination by this court (in place of the earlier order dated 19-4-2006):

Whether ITAT 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 read with Explanation (baa) of the Income-lax Act?

2. As regards question No. (i), we find that before the Tribunal has answered the issue thus:

6. The 3rd and 5th grounds relate to the same issue. It is the assessee''s claim in these grounds that for the purpose of computing profits and gains, while computing the deduction u/s 80HHC, the interest received by the assessee should be netted against the interest paid and only the net amount of interest shall be excluded by invoking Explanation (baa) below the section. It is contended that the orders of the Income Tax authorities holding to the contrary are not correct, in the light of the order of the Special Bench of the Tribunal in the case of Lalsons Enterprises 89ITD 25 (Para 28). The Commissioner (Appeals) in para 11 of his order has rejected the assessee''s claim for netting. However, in the light of the order of the Special Bench cited above, the order of the Income Tax authorities rejecting the principle of netting cannot be upheld, while therefore upholding the assessee''s claim for netting of the interest. We restore

the matter to the assessing officer to enable him to examine the assessee''s claim that there is factually a nexus between the interest paid and received and take a fresh decision in the light of the Special Bench Order. The assessee shall be given adequate opportunity of being heard decision is taken. These grounds are decided accordingly.

Although the Tribunal has followed (2004) 89 ITD 25 and held that netting should be allowed, it has remitted the matter to the assessing officer ''to enable him to examine the assessee''s claim that there is factually a nexus between the interest paid and received and take a fresh decision''

3. We find no reason to interfere with the directions given by the ITAT, which is consistent with the decision rendered by us today in the batch of the appeals of which the present appeal forms part. Needless to add, the assessing officer will proceed in accordance with our judgment.

4. The appeal is accordingly dismissed.

