IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 438/2014

CIT -VIII ..... Appellant

Through: Mr.Balbir Singh, Sr.Standing Counsel with Mr.Abhishek Singh Baghel, Advocate

versus

XLNC FASHIONS ..... Respondent

Through:

CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

01.09.2014

Deduction under Section 10B of the Income Tax Act, 1961 (Act, in short) is to be made as per the formula prescribed by Sub-Section (4), which reads as under:

"10B. Special provision in respect of newly established hundred per cent export- oriented undertakings-

.....

.....

(4) For the purposes of sub-section (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".

Sub-section (4), therefore, is the special provision which enables the assessee to compute the profits derived from the export of articles or things or computer software. We do not see any conflict between Sub- section (1) and Sub-section (4) to Section 10B, as Sub-section (1) states that deduction of such profits and gains as are derived by a hundred percent export-oriented undertaking from the export of articles or things or software would be eligible under the said Section. Sub- section (1) is a general provision and identifies the income which is exempt and has to be read in harmony with Sub-section (4) which is the formula for finding out or computing what is eligible for deduction under Sub-section (1). Neither of the two provisions should be made irrelevant and both have to be applied without negating the other. In other words, the manner of computing profits derived from exports under Sub-section (1), has to be determined as per the formula stipulated in Sub-Section (4), otherwise Sub-section (4) would become otiose and irrelevant.

The issue in question in this appeal which pertains to the Assessment Year 2009-10, relates to duty draw back in the form of DEPB benefits. As per Section 28, clause (iii-c), any duty of customs or excise repaid or repayable as drawback to a person against exports under Customs and Central Excise Duties Draw Back Rules, 1971 is deemed to be profits and gains of business or profession. The said

provision has to be given full effect to and this means and implies that the duty draw back or duty benefits would be deemed to be a part of the business income. Thus, will be treated as profit derived from business of the undertaking. These cannot be excluded.

Even otherwise, when we apply Sub-section (4) to Section 10B, the entire amount received by way of duty draw back would not become eligible for deduction/exemption. The amount quantified as per the formula would be eligible and qualify for deduction/exemption. The position is somewhat akin or close to Section 80HHC of the Act, which also prescribes a formula for computation of deduction in respect of exports.

In view of the aforesaid, we do not find any merit in the present appeal and the same is dismissed.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

SEPTEMBER 01, 2014