IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 186 of 2003
With
TAX APPEAL NO. 187 of 2003
TO
TAX APPEAL NO. 189 of 2003
With
TAX APPEAL NO. 371 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and
HONOURABLE MR.JUSTICE K.J.THAKER

==

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==

EMPIRE PUMPS PVT. LTD.....Appellant(s)
Versus
A.C.I.T.....Opponent(s)

==

Appearance:
MR RK PATEL, ADVOCATE for the Appellant(s) No. 1

http://www.itatonline.org

MRS MAUNA M BHATT, ADVOCATE for the Opponent(s) No. 1
==

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 14/10/2014

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. These appeals have been filed at the instance of the assessee – M/s. Empire Pumps Pvt. Ltd challenging the orders passed by the Income Tax Appellate Tribunal, Ahmedabad Bench for different assessment years as under:

Tax Appeal No.	Order date	Appeal No.	Assessment Year
186 of 2003	07/03/03	1701/AHD/1995	1989-90
187 of 2003	07/03/03	1702/AHD/1995	1991-92
188 of 2003	07/03/03	1701/AHD/1995	1989-90
189 of 2003	07/03/03	1702/AHD/1995	1991-92
371 of 2002	24.05.2002	4030/AHD/1995	1992-93

2. The appellant assessee is a Private Limited Company being regularly assessed to tax. For the aforesaid assessment years, the appellant had filed returns of income which were processed under section 143(3) after making various additions and disallowances. Being aggrieved by the additions and disallowances made by the Assessing Officer, the apepllant preferred first appeal before the learned CIT(Appeals) who granted partial relief to the appellant.

2.1 Being aggrieved by the order passed by the learned

http://www.itatonline.org

CIT(A) the appellant as well as respondent preferred appeals before the Tribunal, Ahmedabad Bench. The Tribunal vide impugned orders dismissed the appeal filed by the appellant on certain points pertaining to the above referred deduction and at the same time directed the Assessing Officer to recompute the deductions on the item of dividend income.

2.2 The Tribunal allowed the appeal filed by the revenue in full and the relief granted by CIT(A) for the deduction in respect of items of interest income was reversed to the detriment of the appellant and in favour of the revenue. The major controversy between the appellant and the revenue pertained to interpretation of provisions of section 80HHA and 80-I of the Act for granting deductions.

3. These appeals have been admitted for consideration of the following substantial questions of law:

Tax Appeal No. 186 of 2003

> “(1) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 in respect of item of interest income of Rs. 2306847/- being business interest from trade debtors and other interest of Rs. 95189/- being interest on misccellaneous receipts?
>
> (2) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act,

http://www.itatonline.org

1961 in respect of item of interest from IDBI amounting to Rs. 50225/-?"

Tax Appeal No. 187 of 2003

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 by holding that the gross interst income is to be excluded while computing the profits of industrial undertaking for the purpose computing deduction under Section 80HHA and section 80-I of the Income Tax Act, 1961?"

Tax Appeal No. 188 of 2003

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 in respect of items of dividend of Rs. 1083/-, profit on sale of plant of Rs. 613/-, profit on sale of vehilce of Rs. 3853/-, profit on hob work of Rs. 7620/-, repairing receipt of Rs. 19076/- and DLI refund of Rs. 1433/-?"

Tax Appeal No. 189 of 2003

Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 in respect of items of sale of spare parts Rs. 5386/-, sale of cables Rs. 66671/-, repair charges Rs. 47330/-,

http://www.itatonline.org

interest received Rs. 301225/- , dividend Rs. 6083/-, other receipts of Rs. 2771/- and interest from IDBI RS. 28700/-?"

Tax Appeal No. 371 of 2002

"(1) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 in respect of item of interest income of Rs. 852744/- comprising of financial interest on Fixed Deposit, business interest from trade debtors and other interest on misccellaneous receipts?

(2) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in its interpretation of section 80HHA and section 80-I of the Income Tax Act, 1961 in respect of item of interest from IDBI amounting to Rs. 28700/-?"

4. Mr. R.K. Patel, learned advocate appearing for the appellant in these appeals has drawn our attention to Sections 80HHA and 80-I of the Act and submitted that the Tribunal has grossly erred in interpreting the scope and ambit of the expression **'derived from'** used by the legislature in the provisions of section 80HHA and 80-I of the Act. Relying on the decision of this Court in the case of **Nirma Industries Ltd. vs. Deputy Commissioner of Income-Tax reported in 283 ITR 402**, Mr. Patel submitted that the same item of receipt cannot be treated differently and that the interest on various items i.e. same item of receipt cannot be treated

http://www.itatonline.org

differently : once while computing the gross total income and secondly at the time of computing deduction under section 80-I cannot be done.

4.1 Mr. Patel has also relied upon the unreported decisions rendered by co-ordinate Benches of this High Court **dated 21.08.2012 in Tax Appeal No. 257 of 2000 with Tax Appeal No. 256 of 2000** and **dated 12.03.2014 passed in Tax Appeal No. 1468 of 2006 and allied matters**. Reliance has also been placed on the decision of the Apex Court in the case of **Commissioner of Income Tax vs. Karnal Co-operative Sugar Mills Ltd reported in 243 ITR 2 (SC)**.

5. Mr. Manish Bhatt, learned Senior Advocate appearing with Ms. Mauna Bhatt, learned advocate for the respondent – revenue in these appeals supported the impugned orders passed by the Tribunal and submitted that so far as the issue regarding interest from Bajaj institution is concerned, this Court may consider the decision of the Apex Court in the case of **Liberty India vs. Commissioner of Income Tax reported in (2009) 317 ITR 218 (SC).**

6. We have heard learned advocates for both the sides and perused the papers on record. The issue involved in Tax Appeals Nos. 186 of 2003 and 371 of 2002, so far as question no. 1 is concerned is squarely covered by the decision of this Court in the case of **Nirma Industries (supra)** which reads as under:

> "27. In so far as Question No.2 is concerned, according to the Tribunal Section 80I of the Act uses the phrase 'derived from' and hence the interest

http://www.itatonline.org

received by the assessee from its trade debtors cannot be taken into consideration for the purpose of computing profits derived from an industrial undertaking. The Tribunal has failed to appreciate that it is not the case of the assessing officer that the interest income is not assessable under the head 'profits and gains of business'. It is only while computing relief under section 80I of the Act that the revenue changes its stand. **When one reads the opening portion of section 80I of the Act it is clear that words used are : "gross total income of an assessee includes any profits and gains derived from an industrial undertaking". Once this is the position then, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the prescribed percentage is to be allowed. That, in fact the gross total income of the assessee included profits and gains from such business, and this is apparent on a plain glance at the computation in the assessment order. Both in relation to Vatva unit and Mandali unit the computation commences by taking profit as per statement of income filed alongwith return of income. Therefore, the same item of receipt cannot be treated differently : once while computing the gross total income, and secondly, at the time of computing deduction under section 80I of the Act. Therefore, on this limited count alone the order of the Tribunal, suffers from a basic fallacy resulting in an error in law and on facts.** The Tribunal instead of recording findings on facts proceeded to discuss law. This litigation could have been avoided if the parties had invited attention to basic facts."

[Emphasis Supplied]

6.1 Sections 80HH and 80-I of the Act are also reproduced hereunder:

"80HH. Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of

http://www.itatonline.org

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.
(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-
(i) it has begun or begins to manufacture or produce articles after the 31st day of December, 1970 [6] but before the 1st day of April, 1990], in any backward area;
(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area:

Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a result of the reestablishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area;
(iv) it employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power. Explanation.- Where any machinery or plant or any part thereof previously used for any purpose in any backward area is transferred to a new business in that area or in any other backward area and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (iii) of this sub- section, the condition specified therein shall be deemed to have been fulfilled.
(3) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely:-
(i) the business of the hotel has started or starts functioning after the 31st day of December, 1970 [1]

http://www.itatonline.org

but before the 1st day of April, 1990], in any backward area;
(ii) the business of the hotel is not formed by the splitting up, or the reconstruction, of a business already in existence;
(iii) the hotel is for the time being approved for the purposes of this sub- section by the Central Government.
(4) The deduction specified in sub- section (1) shall be allowed in computing the total income in respect of each of the ten assessment years beginning with the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or the business of the hotel starts functioning: Provided that,-
(i) in the case of an industrial undertaking which has begun to manufacture or produce articles, and
(ii) in the case of the business of a hotel which has started functioning, after the 31st day of December, 1970 , but before the 1st day of April, 1973 , this sub- section shall have effect as if the reference to ten assessment years were a reference to ten assessment years as reduced by the number of assessment years which expired before the 1st day of April, 1974 .
(5) Where the assessee is a person other than a company or a co- operative society, the deduction under sub- section (1) shall not be admissible unless the accounts of the industrial undertaking or the business of the hotel for the previous year relevant to the assessment year
for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub- section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant. 1
(6) Where any goods held for the purposes of the business of the industrial under- taking or the hotel are transferred to any other business carried on by the assessee, or where any goods held for the purposes of any other business carried on by the assessee are transferred to the business of the industrial under- taking or the hotel and, in either case, the consideration, if any, for such transfer as

http://www.itatonline.org

recorded in the accounts of the business of the industrial undertaking or the hotel does not correspond to the market value of such goods as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains of the industrial undertaking or the business of the hotel shall be computed as if the transfer, in either case, had been made at the market value of such goods as on that date: Provided that where, in the opinion of the Assessing] Officer, the computation of the profits and gains of the industrial undertaking or the business of the hotel in the manner hereinbefore specified presents exceptional difficulties, the Assessing] Officer may compute such profits and gains on such reasonable basis as he may deem fit. Explanation.- In this sub-section," market value" in relation to any goods means the price that such goods would ordinarily fetch on sale in the open market.

(7) Where it appears to the Assessing] Officer that, owing to the close connection between the assessee carrying on the business of the industrial undertaking or the hotel to which this section applies and any other- person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the business of the industrial undertaking or the hotel, the Assessing] Officer shall, in computing the profits and gains of the industrial undertaking or the hotel for the purposes of the deduction under this section, take the amount of profits as may be reasonably deemed to have been derived therefrom.

(9) In a case where the assessee is entitled also to the deduction under section 80-I or] section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which this section applies, effect shall first be given to the provisions of this section.

(9A) Where a deduction in relation to the profits and gains of a small- scale industrial undertaking to which section 80HHA applies is claimed and allowed under that section for any assessment year, deduction in relation to such profits and gains

http://www.itatonline.org

shall not be allowed under this section for the same or any other assessment year.]
(10) Nothing contained in this section shall apply in relation to any undertaking engaged in mining.
(11) For the purposes of this section," backward area" means such area as the Central Government may, having regard to the stage of development of that area, by notification 3 in the Official Gazette, specify in this behalf: Provided that any notification under this sub- section may be issued so as to have retrospective effect to a date not earlier than the 1st day of April, 1983 .]”

Section 80-I(1). - In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent. thereof, in computing the total income of the company."

7. In view of the above decision, we are of the opinion that the Tribunal has erred in reducing the other income received by the appellant as the entire income is incidental to manufacturing activities and therefore the deduction under section 80-I is required to be allowed on the gross total income before deduction of 80-HHA and income from others. Therefore, question no. 1 in Tax Appeals Nos. 186 of 2003 and 371 of 2002 is required to be answered in the affirmative i.e. in favour of the assessee and against the revenue.

8. So far as question no. 2 of Tax Appeal Nos. 186 of 2003 and 371 of 2002 is concerned, the institution with which the assessee was carrying on business is required to be borne in mind. The interest from Bajaj Institution has direct nexus with the business and therefore the interest is required to be considered as derived from business. Question no. 2 is

http://www.itatonline.org

therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

9. So far as the question raised in Tax Appeal No. 187 of 2003 is concerned, the issue is squarely covered by the decision of this Court **Tax Appeal No. 257 of 2000 with Tax Appeal No. 256 of 2000** as well as the decision of the Apex Court in the case of **Karnal Co-operative Sugar Mills Ltd (supra).** The Apex Court in the case of **Karnal Co-operative Sugar Mills Ltd (supra)** has observed

> "2. In the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest has been earned. This is, therefore, not a case where any surplus share capital money whichis lying idle has been deposited in the bank forhte purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Int his view of the matter the ratio laid down by this Court in Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT [1997] 227 ITR 172 will not be attracted. The more appropriate decision in the factual situation in the present case is in CIT vs. Bokaro Steel Ltd. [1999] 236 ITR 315 (SC). The appeal is dismissed. There will be no order as to costs."

9.1 Similarly the relevant observations made in Tax Appeal No. 257 of 2000 by this Court are as under:

> "13. In the present case, the assessee's stand has consistently been that due to insistence of the financial institutions, the assessee was compelled to park certain amount in fixed deposits from which it earned interest of 12 per cent, whereas the market rent at the relevant time was higher. Such

> interest income was utilized for the purpose of assessee's business by purchasing new machinery. In short, the assessee contended that such income cannot be treated as income from other sources, but must be seen as part of the assessee's business income.
>
> 15. In view of the exercise already undertaken by the Delhi High Court in the case of Jaypee DSC Ventures Ltd (supra), we may not separately refer to in detail the facts and ratio of the various decisions of the Supreme Court, noted above. Suffice it to conclude, in the present case also, the assessee was compelled to park a part of its funds in fixed deposits under the insistence of the financial institutions. On such funds, the assessee received interest. Such income cannot be treated as income from other sources and must be seen as part of the assessee's business of manufacturing and selling of chemicals. The decision of the Apex Court in the case of Pandian Chemicals Ltd. (supra) would not be applicable. In the said case, the Apex Court was interpreting the phrase 'derived from' used in section 80HH of the Act. It was in this background that the Apex Court held that the words 'derived from' must be understood as something which has a direct or immediate nexus with the assessee's industrial undertaking. It was on that basis that the Apex Court held that interest derived by the industrial undertaking of the assessee on deposits made with the Electricity Board for the supply of electricity for running the industrial undertaking could not be said to flow directly from the industrial undertaking."

10. Thus, it is clear that the income earned from fixed deposit placed for business purpose cannot be treated as income from other source but must be seen as part of the assessee's business income. In the present case also the assessee was compelled to park a part of its funds in fixed deposits under the insistence of the financial institutions and therefore the income received thereupon cannot be termed to

http://www.itatonline.org

be income from other sources.

11. So far as Tax Appeals No. 188 and 189 of 2003 are concerned, looking to the smallness of the amounts involved, we have not entered into the merits of the matters and therefore the same are required to be dismissed without entering into the merits of the case.

12. In the premises aforesaid, Tax Appeals No. 186 & 187 of 2003 and 371 of 2002 are allowed. Tax Appeals No. 188 and 189 of 2003 are dismissed.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

divya

http://www.itatonline.org