IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 577 of 2007 (O&M)

Date of Decision: 4.11.2015

Commissioner of Income Tax, Ludhiana

....Appellant.

Versus

Duke Fashions Pvt. Ltd., Ludhiana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARI PAL VERMA.

PRESENT: Mr. Rajesh Katoch, Advocate for the appellant.

Mr. Rajiv Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay in refiling the appeal is condoned.

2. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 31.8.2006 (Annexure A-III) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 740/CHD/2004 for the assessment year 2001-02, claiming the following substantial questions of law:-

> i) Whether on the facts and law, the Hon'ble Income Tax Appellate Tribunal was justified in

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holding that insurance claim was not in the nature of 'other receipts' and 90% of such receipts could not be reduced from 'profit of business' under clause (baa) of Explanation below section 80HHC(4C) of I.T. Act?

ii) Whether on the facts and law, the Hon'ble Income Tax Appellate Tribunal was correct in holding that the sales tax & CST were not includible in total turnover for computing deduction u/s 80HHC of I.T. Act, when the sales tax & CST were realized as a part of sale proceeds of the goods manufactured by the Respondent?

iii) Whether on the facts and law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing deduction u/s 80IB on duty drawn back when the same was not a profit derived from industrial undertaking/specified business u/s 80IB of I.T. Act?

3. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return on 25.10.2001 for the assessment year 2001-02 declaring income at ₹ 20,87,310/-. The assessment was framed vide order dated 30.1.2004 (Annexure A-I) by the Assessing Officer at ₹ 32,94,380/-. However, deduction under Section 80HHC of the Act was worked out after reducing 90% of the receipts from 'profits from business' under clause (baa) of Explanation to Section 80HHC(4C) of the Act. Besides

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this, the sales tax and CST amounting to ₹ 38,15,689/- was included in the total turnover for computing deduction under Section 80HHC of the Act. The deduction under Section 80IB of the Act was not allowed on the duty draw back as it was not profit derived from industrial undertaking. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The CIT(A) vide order dated 30.3.2004 (Annexure A-II) partly allowed the appeal and directed the Assessing Officer not to reduce 90% of the receipts from the 'profits of the business' under clause (baa) of Explanation to Section 80HHC(4C) of the Act. Further, the Assessing Officer was directed not to add the sales tax and CST receipts in the total turnover for computation of deduction under Section 80HHC of the Act and also to allow deduction under Section 80IB of the Act by treating duty draw back as part of profits derived from industrial undertaking. Against the order, Annexure A-II, the revenue filed an appeal before the Tribunal who vide order dated 31.8.2006 (Annexure A-III) dismissed the appeal on the issue of insurance claim and sales tax and CST following its own decision in ITA No. 742/CHD/2004 in the case of DCIT v. M/s Verma Fabrics and upheld the order of the CIT(A) in treating the duty draw back as a part of profit derived from industrial undertaking under Section 80IB of the Act. Hence, the present appeal by the revenue.

4. We have heard learned counsel for the parties.

5. It was not disputed by learned counsel for the parties that question No. (i) is covered by the decision of this Court in ITA No. 165 of 2007 (Commissioner of Income Tax-I, Ludhiana v. Venus Fabrics, Ludhiana) decided on 18.7.2013 which was followed in ITA No. 152 of 2007 (Commissioner of Income Tax-I, Ludhiana v. M/s Dee Kay

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Knitwears, Ludhiana) decided on 18.7.2013, wherein it was held as under:-

> "We have heard counsel for the parties, perused the impugned order as well as the relevant statutory provisions. Before we answer the question, it would be appropriate to reproduce explanation (baa) appended to Section 80 HHC of the 1961 Act, as follows:-
>
> > "(baa) "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by—
> >
> > (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie)] of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and
> >
> > (2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India ;"
>
> The words "any other receipt of a similar nature included in such profits" used in the explanation have to be read "edjusdem generis" to the preceding words, i.e., "brokerage", "commission", "rent", "charges". The words "similar nature" used before the words "any other receipt" refers to and alludes to the principle of

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"edjusdem generis" and in fact leaves no ambiguity as to legislative intent that only such receipts would fall within the meaning of sub-clause (1) of the explanation as would partake the nature of the words preceding the expression "receipts of a similar nature". A claim for insurance arises on account of a special loss to an assessee and, therefore, does not require any degree of legal acumen or scholarship to infer that such receipt cannot be included within sub-clause (1) of the aforementioned explanation. We draw support for a conclusion from a judgment of this Court in CIT Vs. Khemka Containers Private Ltd. (275 ITR 559)."

The said issue was decided against the revenue. Accordingly, question No. (i) is answered against the revenue and in favour of the assessee.

6. Regarding question No. (ii), again learned counsel for the parties are *ad idem* that this question is covered by the decisions of this Court in **Commissioner of Income Tax v. Lakshmi Machine Works (2007) 290 ITR 667** and **Commissioner of Income Tax v. Vardhman Polytex Ltd. (2008) 296 ITR 382** wherein it was held that the amount of sales tax and excise duty for the purposes of computation of deduction under Section 80HHC of the Act are to be excluded from the total turnover. Accordingly, question No. (ii) is also answered against the revenue.

7. Adverting to question No. (iii), learned counsel for the revenue has relied upon the judgment of the Apex Court in **Liberty India**

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v. Commissioner of Income Tax (2009) 317 ITR 218 (SC) to urge that profit from DEPB and Duty Drawback Scheme are not profits derived from the eligible business under Section 80IB of the Act. It was prayed that question No. (iii) is, thus, to be answered in favour of the revenue. Learned counsel for the assessee was unable to controvert that the similar issue was adjudicated by the Apex Court in **Liberty India's case (supra)** in favour of the revenue. Accordingly, question No. (iii) is decided in favour of the revenue and against the assessee.

8. In view of the above, the appeal is partly allowed in the above terms.

(AJAY KUMAR MITTAL)
JUDGE

November 4, 2015
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(HARI PAL VERMA)
JUDGE

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