

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 261 of 2008 (O&M)

Date of Decision: 30.11.2015

M/s Shiv Shakti Rice Mills, Taraori, Karnal

....Appellant.

Versus

Assistant Commissioner of Income Tax, Karnal Range, Karnal

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

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?

PRESENT: Ms. Munisha Gandhi, Senior Advocate with
Ms. Salina Chalana, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of six appeals bearing ITA Nos. 261 to 266 of 2008 as according to learned counsel for the appellant, similar questions of law are involved in all the appeals. For brevity, the facts are being extracted from ITA No. 261 of 2008.

2. ITA No. 261 of 2008 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 13.4.2007 passed by the Income Tax Appellate Tribunal, Delhi Bench "E", New Delhi (hereinafter referred to as "the Tribunal") in ITA No. 993(Del)/2006 for the assessment year 2004-05, claiming the

following substantial questions of law:-

- i. Whether the DEPB income is eligible as a deduction u/s 80HHC being an export incentive granted for promotion of export?
- ii. Whether the Taxation Amendment Act, 2005 introduced with effect from 1.4.1998 can be used to deny a benefit accruing to the assessee on account of incentives earlier granted and whether the amendment would be hit by the principle of Promissory estoppel?
- iii. Whether the exclusion of FDR interest from the business income under section 80HHC of the Income Tax Act is justified particularly in the light of the fact that the issue is to be finally decided by the Supreme Court of India?

3. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein are that the assessee is engaged in the business of rice shelling and derives income from export of rice as well as sale in the domestic market. The assessee filed its return of income on 13.9.2004 for the assessment year 2004-05 declaring income at ₹ 13,65,930/-. The case was processed on returned income and subsequently was taken up for scrutiny. Notices under Sections 143(2) and 142(1) of the Act were issued on 21.2.2005. The Assessing Officer considered the interest on FDRs as income from other sources and not as a business income and held that the FDR interest was not eligible for deduction under Section 80HHC of the Act. Further, it was held that the Duty Entitlement Pass Book (DEPB) income of ₹ 10,95,440/- was not

eligible for deduction under Section 80HHC of the Act in view of the judgment of the Delhi High Court in CIT v. Ritesh Industries (192 CTR 81) which held that the DEPB is not an income derived from industrial undertaking. Accordingly, the Assessing Officer vide assessment order dated 22.3.2005 (Annexure A-1) assessed the income of the assessee at ₹ 17,76,120/-. 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 19.1.2006 (Annexure A-2) upheld the order of the Assessing Officer and dismissed the appeal. The CIT(A) denied the FDR interest to the assessee holding that the same has been settled by the jurisdictional High Court in favour of the revenue in the case of Rani Paliwal v. CIT (2004) 268 ITR 220. Still dissatisfied, the assessee filed an appeal before the Tribunal, who vide impugned order dated 13.4.2007 remanded the issue relating to eligibility of deduction of DEPB income under Section 80HHC of the Act in view of the amendment to Section 28 of the Act with retrospective effect from 1.4.1998. The Tribunal also upheld the view of the CIT(A) that the FDR interest could not be taken into consideration for allowing deduction under Section 80HHC of the Act. Hence, the present appeal.

4. We have heard learned counsel for the appellant-assessee.

5. Question Nos. (i) and (ii) being inter-connected are taken up together. The Tribunal held that as per clause (iiid) and (iiie) of Section 28 of the Act, any profit on transfer of DEPB scheme was to be considered as profits and gains of business or profession. It was further noticed that an assessee having export turnover exceeding ₹ 10 crores, the profits computed under sub-section (3) of Section 80HHC of the Act shall be further increased by amount which bears to 90% of the sum

referred in clause (iiid) and (iiie) of Section 28 of the Act, the same proportion as the export turnover bears to the total turnover. Accordingly, the Assessing Officer was directed to re-compute the deduction under Section 80HHC as amended by Taxation Laws (Amendment) Act, 2005 with retrospective effect from 1.4.1998. Since, the matter has been remitted back to the Assessing Officer for recomputation, therefore, question Nos. (i) and (ii) do not survive for consideration.

6. Adverting to question No.(iii), it may be noticed that the Supreme Court in **M/s Liberty India v. Commissioner of Income Tax, Karnal (2009) 317 ITR 218 (SC)** while drawing distinction between “profits derived from an industrial undertaking” as against “profits attributable to industrial undertaking” had categorically held that deduction was admissible only where the profits were derived from industrial undertaking. In other words, it was that the profits should have resulted from industrial activity carried on by the assessee.

7. Further, a Division Bench of this Court in **Sneh Lata Jain v. Income Tax Officer, Ward No. II, Ambala and another, ITA No. 615 of 2006** decided on 27.9.2007 to which one of us (Ajay Kumar Mittal, J) was a member, where Fixed Deposit Receipts were used as security or collateral security to obtain various loans from the banks in the form of car loan, machinery loan, miscellaneous loan etc., it was held that it could not be construed to have direct nexus with the profits and gains of the industrial undertaking derived from export business activity which could be taken into account for calculating the deduction admissible under Section 80HHC of the Act. The relevant observations read thus:-

“We have given our thoughtful consideration to the

submissions of the learned counsel for the assessee and do not find merit in the same. The Tribunal while deciding the controversy had placed reliance upon the Apex Court decisions in **Commissioner of Income-tax v. Sterling Foods [1999] 237 ITR 579**, **Pandian Chemicals Ltd. v. Commissioner of Income Tax, [2003] 262 ITR 278** and also of the jurisdictional High Court in **Liberty Footwear Co. v. Commissioner of Income Tax, [2006] 283 ITR 398** and had concluded that the words “derived from” used in Section 80 HHC of the Act should have a direct nexus between the profits and gains and the industrial undertaking and since the interest of Rs.7,22,106/- which was earned on fixed deposit receipts which were used as security or collateral security to obtain various loans from the banks i.e. car loan of Rs.7,93,115/-, machinery loan of Rs.1,26,357/-, miscellaneous loan of Rs.31,38,892/- and CC loan of Rs.13,95,990/- could not be construed to have direct nexus with the profits and gains of the industrial undertaking from export business activity and on that basis the same was not taken into account for the purposes of calculation of deduction under Section 80 HHC of the Act.”

8. Examining the factual matrix herein, it may be noticed that the Tribunal had concluded that interest on Fixed Deposits had accrued on the fixed deposits pledged with FCI and also with the Sales Tax Department. The interest on FDRs did not have an immediate nexus

with the export business and, therefore, had to be necessarily treated as income from other sources and not business income derived from export business activity. Once that was so, question No. (iii) is decided against the assessee.

9. The substantial questions of law are answered accordingly. Finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 30, 2015
gbs

(RAMENDRA JAIN)
JUDGE