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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITR 2/2004

COMMR OF INCOME TAX

..... Petitioner

Through: Mr.Dileep Shivpuri, Sr.Standing
Counsel, Mr.Sanjay Kumar,
Jr.Standing counsel and Mr.Vikrant
A.Maheshwari, Adv.

versus

UNIPLAS INDIA LTD

..... Respondent

Through: Mr.Sanjay Katyal, Adv. for Official
Liquidator.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **19.10.2016**

1. The question of law framed in this case is "*Whether on the facts and in the circumstances of the case, the ITAT has erred in directing the Assessing Officer to allow the assessee's claim regarding deduction under section 80HHC?*" The assessee is engaged in garment export and had inter alia during the relevant assessment year AY 1990-1991 reported a certain amount as commission income for export sales, so the assessee claimed the benefit of Section 80 HHC. The AO rejected the assessee's contention; the appellate commissioner confirmed the views of the AO. However, the ITAT allowed the appeal by the impugned order. While doing so it followed its previous special bench ruling in *International Research Park Laboratories Limited vs. CIT* (1994) 50 ITD 37, where it was

held that deduction under Section 80HHC can be granted on the basis of ratio export turnover in relation of turnover of the entire business.

2. Revenue contends in the light of subsequent decisions of Supreme Court in ***Pandian Chemicals Limited vs. CIT (2003) 262 ITR 278 (SC)*** and ***Liberty India vs. CIT (2009) 317 ITR 218 (SC)***, the appeal has to be allowed. It is submitted by Mr. Shivpuri that the expression “derived from” has been interpreted in a narrow manner consistently by the Supreme court which has held that there should be an immediate proximity between the nature of the income earning activity and the export business of the assessee for the income to be covered under the provision.

3. Counsel for the assessee relied upon the ruling in ***P.R.Prabhakar vs. CIT (2006) 6 SCC 86***. It is submitted that like in this case in ***P.R.Prabhakar’s*** case (*supra*) too the assessee had earned commission income for which benefit under Section 80 HHC was allowed.

4. In ***Pandian Chemicals Limited’s*** case (*supra*), the court has held as follows:

“4. Section 80HH of the Income-tax Act grants deduction in respect of profits and gains “derived from” an industrial undertaking. The contention of the appellant before us is that interest earned on the deposit made with the Electricity Board for the supply of electricity to the appellant's industrial undertaking should be treated as income derived from the industrial undertaking within the meaning of Section 80HH. It is submitted that without the supply of electricity the industrial undertaking could not run and since electricity was an essential requirement of the industrial undertaking, the industrial undertaking could not survive without it. It is further

pointed out that for the purpose of getting this essential input, the statutory requirement was that the deposit must be made as a pre-condition for the supply of electricity. Consequently, according to the appellant, the interest on the deposit should be treated as income derived from the industrial undertaking within the meaning of Section 80HH.

5. The High Court rejected the submission of the appellant by relying upon the decision of this court in Cambay Electric Supply Industrial Co. Ltd. v. CIT (1978) 113 ITR 84 , where this court had clearly stated that the expression "derived from" had a narrower connotation than the expression "attributable to" (page 93) :

"In this connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression 'derived from', as, for instance, in Section 80J. In our view, since the expression of wider import, namely, 'attributable to', has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

6. The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said:

"The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition." (p.328)

This definition was approved and reiterated in 1955 by a Constitution Bench of this court in the decision of Mrs. Bacha F. Guzdar v. CIT (1955) 27 ITR 1 . It is clear, therefore, that

the word "derived from" in Section 80HH of the Income-tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with Electricity Board cannot be said to flow directly from the industrial undertaking itself."

5. As it is evident that ***Pandian Chemicals Limited***'s case (*supra*), has relied upon the previous ruling in ***Cambay Electric Supply Industrial Co. Ltd. vs. CIT*** (1978) 113 ITR 84 and the constitution bench judgment of ***Mrs. Bacha F. Guzdar vs. CIT*** (1955) 27 ITR 1 (SC). Furthermore, ***Pandian Chemicals Limited***'s case (*supra*) has been confirmed in ***Liberty India's*** case (*supra*) and subsequently in ***CIT vs. Punjab Stainless Steel Industries*** (2014) 364 ITR 144/46 taxmann.com 68 (SC).

6. This court is of the opinion that in view of the declaration of law made consistently by the Supreme Court in four judgments relied upon by the revenue, the assessee's contention cannot be accepted. In facts too, ***P.R. Prabhakar's*** case (*supra*) is distinguishable because one of the essential business of the assessee was activity of commission/brokerage and procuring orders of export for others. The question as to whether that income was "income derived from export business" therefore could not be said to have arisen. In any event ***P.R. Prabhakar's*** case (*supra*) does not refer to the previous judgment in ***Cambay Electric Supply Industrial Co. Ltd.***'s case (*supra*) and ***Pandian Chemicals Limited***'s case (*supra*).

7. For the foregoing reasons the appeal is to succeed. The

question of law is answered in favour of the revenue.

8. The appeal is allowed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 19, 2016

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