$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
R-3
+ **ITA 671/2004**

COMMISSIONER OF INCOME TAX ..... Petitioner
Through: Mr. Rahul Kaushik, Senior standing counsel.

versus

ASIAN KNITWEARS P. LTD. .... Respondent
Through: Mr. Simran Mehta and Ms. Swati R.K. and Mr. Shivank Datta, Advocates.

And

R-4
+ **ITA 678/2004**

COMMISSIONER OF INCOME TAX ..... Petitioner
Through: Mr. Rahul Kaushik, Senior standing counsel.

versus

ASIAN KNITWEARS P. LTD. .... Respondent
Through: Mr. Simran Mehta and Ms. Swati R.K. and Mr. Shivank Datta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **04.07.2017**

1. These appeals are directed against the impugned order dated 26th March 2004 passed by the Income Tax Appellate Tribunal (‘ITAT’) in ITA Nos. 2263/Del/2000 and 2264/Del/2000 for the Assessment Years (‘AYs’) 1996-97 and 1997-98, respectively.

2. While admitting these appeals, the following question of law was framed for consideration:

> "Whether the Income Tax Appellate Tribunal was correct in law in holding that the Assessee is entitled to reduce interest paid by it from the interest received by it, while calculating deduction under Section 80-HHC(4A) read with Explanation (baa) of the Income tax Act, 1961?"

3. Subsequently, this Court has in its decision in ***Commissioner of Income Tax v. Shri Ram Honda Power Equip (2007) 289 ITR 475 (Del)*** *inter alia* held that the word "interest" in clause (baa) of Explanation to Section 80 HHC connotes "net interest" and not "gross interest". "Therefore in deducting such interest the Assessing Officer will take into account the net interest i.e. the gross interest as reduced by the expenditure incurred for earning such interest." The Court affirmed the decision of the Special Bench of the ITAT in ***Lalsons Enterprises v. Deputy CIT (2004) 89 ITD 25 (Del) (SB)***.

4. In the present case, it is contended by Mr. Rahul Kaushik, learned Senior standing counsel for the Revenue that there is no categorical finding by the Assessing Officer ('AO') in the present case that the interest received by the Assessee was in the nature of business income or that interest paid by it was for business purposes, and in the absence of a categorical finding to that extent, the matter would have to be remanded to the AO for a fresh determination.

5. As pointed out by Mr. Simran Mehta, learned counsel for the Assessee, this question was also dealt with in ***Commissioner of Income Tax v. Shri Ram Honda Power Equip*** (*supra*) wherein it was observed as under:

> "37. However, we must add a caveat here. This holding of ours will apply only where there is a specific finding by the AO that interest income is not business income. However, if in a given case the AO

> has held that the interest income is business income, and this has not been challenged by the Department thereafter, then that question ought not to be permitted to be reopened and the only question then will be if netting should be allowed."

6. In the present case, the Revenue did not raise an issue before the ITAT as regards the nature of interest earned or paid by the Assessee, viz., whether it was in the nature of business income or business expenditure. The Court, therefore, declines the request of the Revenue to remand the matter to the AO for that purpose.

7. In the light of the decision in ***Commissioner of Income Tax v. Shri Ram Honda Power Equip*** (*supra*), the question framed is answered in the affirmative i.e., in favour of the Assessee and against the Revenue.

8. The appeals are, accordingly, dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 04, 2017
Rm