

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 415 OF 2004

M/s. Tema Exchangers Manufactures Pvt. Ltd. .. Appellant

v/s.

The Asstt. Commissioner of Income Tax-10(2)
Mumbai & Anr.

..Respondents

Mr. M. Subramanian I/b V.S. Hadade for the appellant
Mr. Tejveer Singh for the respondent

**CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.**

DATED : 18th JULY, 2018.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) was admitted on 18th July, 2006 on the following substantial questions of law :-

(a) On the facts and in the circumstances of the case, whether the Income-tax Appellate Tribunal was right in law in reversing the order of the CIT(A) and restoring that of the Respondent No.1 and thereby denying the appellant the benefit of Section 80IA of the I.T. Act, in respect of interest income of Rs.6,69,573/-?

(b) On the facts and in the circumstances of the case, whether the Income-tax Appellate Tribunal was right in law in reversing the order of CIT(A) and restoring that of the Respondent No.1 thereby

denying the appellant the benefit of Section 80IA of the I.T. Act, in respect of compensation income of Rs.98,215/-?

2. The impugned order of the Tribunal allowed the respondent Revenue's appeal by holding that the appellant would not be entitled to deduction under Section 80IA of the Act in respect of the following income :-

- | | | |
|------|--------------|---------------|
| (i) | Interest | Rs.6,69,570/- |
| (ii) | Compensation | Rs. 98,215/- |

The interest is earned on fixed deposits and compensation has been received on account of non-supply of spare parts by the supplier for running of the industrial undertaking.

3. The deduction under both the aforesaid heads under Section 80IA of the Act was disallowed by the impugned order of the Tribunal. It followed the decision of the Apex Court in ***Commissioner of Income Tax Vs. Pandian Chemicals Ltd. 318 ITR 420*** which has held that the words 'derived from' means something which has direct and immediate nexus with the industrial undertaking. Thus, the claim for deduction on the above heads was disallowed under Section 80IA of the Act.

4. Mr. Subramaniam, learned Counsel appearing in support of the

appeal points out that Pandian Chemicals Ltd. (supra) was rendered in the context of Section 80HH of the Act and we are concerned with Section 80IA of the Act. It is particularly pointed out that there is a difference in the wording of the two sections as existing during the previous year relevant to the subject assessment year. Section 80HH of the Act grants deduction in respect of the profits and gains derived from industrial undertaking while Section 80IA of the Act as in force at the relevant time grants deduction of profits and gains derived from any business of an industrial undertaking. It is submitted that the above issue is no longer *res integra* as the issue stand concluded in its favour by the decision of this Court in ***Commissioner of Income Tax Vs. Jagdishprasad M. Joshi, 318 ITR 420.***

5. We find that this Court in *Jagdishprasad M. Joshi* (supra), the question which was posed for our consideration was as under :-

“Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the appeal of the assessee holding that the interest income earned by the assessee on fixed deposits with the bank and other interest income are eligible for deduction under Section 80IA of the Income Tax Act, 1961?”

6. This Court answered the question in the affirmative while

dismissing the Revenue's appeal. This by holding that income earned by the assessee on the fixed deposit from the bank has to be extended deductions under Section 80IA of the Act. In support of the above, this Court relied upon the decision of the Delhi High Court in ***Commissioner of Income Tax Vs. Eltek SGS P. Ltd., 300 ITR 06*** wherein the difference in the language employed in Sections 80IB and 80HH of the Act was brought out i.e. “profits and gains derived from industrial undertakings” as found in Section 80HH of the Act with “profits and gains derived from any business of an industrial undertakings”. In view of the difference in language of the two Sections, this Court held that interest on fixed deposits in the bank would be profits and gains derived from any business of an industrial undertaking. The same reasoning would apply to extend deductions under Section 80IA of the Act for the compensation received for non supply of spare parts. Thus, the issue stands concluded in favour of the appellant assessee by the decision of this Court in *Jagdishprasad M. Joshi* (supra).

7. Mr. Tejveer Singh, learned Counsel for the Revenue is unable to points out why the aforesaid decision in the case of *Jagdishprasad M. Joshi* (supra) would not apply to the present facts.

8. In the above view, both the questions of law are answered in the negative i.e. in favour of the appellant assessee and against the respondent Revenue.

9. Accordingly, the appeal is allowed.

(SANDEEP K. SHINDE J.)

(M.S. SANKLECHA, J.)