IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR. JUSTICE N.SATHISHKUMAR

Tax Case Appeal No. 1168 of 2008

Commissioner of Income Tax
Chennai.

.... Appellant

-vs-

M/s. Rane Engine Valves Ltd.,
"Maithir" 132, Cathedral Road,
Chennai – 600 086.

...Respondent

Tax Case Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 15.02.2008 in ITA No.1448/Mds/07 for the Assessment year 2003-04.

For Appellant	:	Mrs.R.Hemalatha
For Respondent	:	Mr.Vijaya Raghavan for Subbaraya Aiyar Padmanabhan

Judgement of the Court was delivered by T.S.Sivagnanam, J

This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (for brevity, the Act) is directed against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 15.02.2008 in ITA No.1448/Mds/07 for the Assessment year 2003-04.

*2.*Heard Mrs.R.Hemalatha, learned Counsel for the Revenue and Mr.Vijaya Raghavan for M/s.Subbaraya Aiyar Padmanabhan, the learned Counsel for the respondent.

3.This Appeal have been admitted on 22.08.2008, on the following Substantial Question of Law:

> *"Whether in the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest income in toto forms part of eligible business profits for the purpose of deduction under Section 80HHC and only 90% has to be excluded from the business profits?"*

4.The learned counsel for the respondent/assessee submitted that tax effect is less than Rs.30,000/- and therefore, it is clearly hit by Circular No. 3 of 2018 dated 11.07.2018 issued by Central Board of Direct Taxes.

5.Mrs. R.Hemalatha, the learned Senior Standing Counsel for the appellant/Revenue submits that though the tax effect is less than the threshold limit hit by Circular No. 3 of 2018, it is hit by the exceptional clause mentioned in paragraph 10(c) of the Circular. In the light of the said submission, we took up the appeal for hearing on merits.

6.The short issue, which falls for consideration, is whether the Tribunal was right in holding that the interest income in toto forms part of eligible business profits for the purpose of deduction under Section 80HHC of the Act and only 90% has to be excluded from the business profits by applying Explanation (baa) to Section 80HHC of the Act.

7. The Commissioner of Income Tax (Appeals) [for brevity the CIT(A)], while allowing the assessee's appeal vide order dated 26.02.2007, stated that the assessee derived income from deposits made with the banks for the purpose of obtaining Letter of Credit, Bank Guarantee and other such related services from the bank. Therefore, the assessee's contention that the interest of income partook the character of business income and accordingly, as per Clause (baa) of the Explanation to Section 80HHC of the Act, 90% interest income is to be excluded from the assessee's eligible business profits instead of its exclusion as a whole. This submission made by the authorized representative of the assessee was accepted by the CIT(A) and applying decision of the Hon'ble Supreme Court in the ***CIT Vs. Karnal Cooperative Sugar Mills Ltd. [reported in 243 ITR 2],*** directed the Assessing Officer to exclude 90% of interest income from the assessee's eligible business profits for the purpose of quantification of deduction under Section 80HHC of the Act.

8.The Tribunal confirmed the order passed by the CIT(A) and in doing so, referred to the decision of the Division Bench of this Court in the case of ***CIT Vs. V.Chinnapandi [reported in (2006) 153 TAXMAN 233].***

9. After hearing the learned counsel for the parties, we are of the view that the CIT(A) did not endeavour to make an exercise as to whether the deposits made with the banks were exclusively for the purpose of obtaining Letter of Credit, a principal condition imposed by the bank and that Letter of Credit was required by the assessee for the purpose of its business.

10. More or less, an identical question was considered by this Court, to which, ***one of us (TSSJ) was a party,*** in the case of ***Arul Mariammal Textiles Limited Vs. ACIT [TCA No. 909 of 2008 dated 07.08.2018].*** This Court, after taking note of the various decisions on the point, held with the assessee in the said case furnished the fixed deposit, which was a principal condition to enable the assessee to open a Letter of Credit for the purpose of import of critical components for manufacture of windmill and it was not the case of the Revenue that the amount was deposited in fixed deposits solely for the purpose of earning interest nor it was the case of the Revenue that the amount, which was deposited, in fixed deposits was surplus money, which was lying idle in the hands of the assessee. In the facts of the said case, this Court came to the conclusion that the whatever

income accrued is merely incidental and not the prime purpose of doing the act in question, which resulted in accrual of some additional income and therefore, the said income is not liable to be claimed as deduction. To apply the decision in the case of ***Arul Mariammal Textiles Limited,*** we are required to have the full facts. However, the same is absent in the assessment order as well as in the order passed by the CIT(A).

11. Mrs.R.Hemalatha, places reliance on the Division Bench of Delhi High Court in the case of the ***CIT Vs. Cosmos International [reported in (2009) 318 ITR 314].*** In the said decision, the Delhi High Court relied upon another decision of the same High Court in the case of ***CIT Vs. Sri Ram Honda Power Equip [reported in (2009) 289 ITR 475],*** wherein the Court held that whether surplus funds are parked with the bank and interest is earned thereon, it can only be categorized as income from other sources. Further, it was pointed out that the interest earned on fixed deposit for the purpose of having credit facilities from the bank, does not have an immediate nexus with the export business and therefore, has to necessarily be treated as income from other sources and not business income.

12. In the case on hand, the question would be whether the deposits made by the assessee with the banks had an immediate nexus with the business. Since the facts are not placed before us, we are of the view that the matter requires to be re-adjudicated afresh, for which purpose, the Assessing Officer should take a fresh look into the matter.

13. The learned counsel appearing for the respondent/ assessee submitted that in the event the matter is being remanded to the Assessing Officer, the assessee should be in a position to canvass the point that 90% of the net interest, which has been included in the profits of the assessee and is computed under head profits and gains of business or profession alone should be taken and not on gross interest to be taken under Clause (1) of Explanation (baa) to Section 80HHC of the Act for determining the profit of the business.

14. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***ACG Associated Capsules (P) Ltd., Vs. CIT [reported in (2012) 247 CTR 0372].***

15. In the light of the findings which we have recorded in the preceding paragraphs, we are of the firm view that the matter requires a fresh adjudication and a fresh look by the Assessing Officer by thoroughly examining the factual position and bearing in mind the legal position pointed out in the preceding paragraphs. During the course of such proceedings it is open to the assessee to place all their submissions including the submission based on the decision in the case of ***ACG Associated Capsules (P) Ltd.***

16. For the above reasons, the appeal filed by the Revenue is allowed, the order passed by the Tribunal as well as the CIT(A) are set aside, the assessment order dated 31.01.2006, on this particular head alone namely, the entitlement for deduction under Section 80HHC of the Act is set aside and the matter is remanded to the Assessing Officer for a fresh consideration to proceed in accordance with law in the manner indicated above. No costs.

[T.S.S., J.] & [N.S.K., J.]
19.11.2018

mrm

To

The Income Tax Appellate Tribunal Madras 'B' Bench.

T.S.Sivagnanam, J.

and

N.Sathishkumar, J.

mrm

T.C.A.Nos.1168 of 2008

19.11.2018