$~7, 26 to 31

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

+ **ITA 749/2016**
+ **ITA 170/2016**
+ **ITA 223/2016**
+ **ITA 577/2016**
+ **ITA 91/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX -1..... Appellant

versus

M/S AMERICAN EXPRESS INDIA PVT. LTD. ..... Respondent

+ **ITA 691/2012**

CIT ..... Appellant

versus

M/S AMERICAN EXPRESS INDIA PVT LTD ..... Respondent

+ **ITA 149/2013**

CIT I ..... Appellant

versus

AMERICAN EXPRESS INDIA PVT LTD ..... Respondent

Through : Sh. Sandeep. S. Karhail and Ms. Sherry Goyal, Advocates, in Item No.7.

Sh. Zoheb Hossain, Sr. Standing Counsel and Sh. Deepak Anand, Jr. Standing Counsel, for Revenue, in Item Nos. 7, 26 and 31.

Sh. Mayank Nagi and Sh. Tarun Singh, Advocates, for respondent, in Item No.26.

Sh. Sandeep. S. Karhail and Ms. Sherry Goyal, Advocates, in Item Nos. 7, 27 to 31.

Sh. Sanjay Kumar, Jr. Standing Counsel, for appellant, in Item No.28.

Sh. Ruchir Bhatia, Sr. Standing Counsel, for Revenue, in Item No.29.

Sh. Raghvendra Singh, Advocate, for petitioner, in Item No.30.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **20.02.2018**

ITA 749/2016

1. The following question of law arises for consideration:

> *"Whether the ITAT erred in law in deleting the addition of ₹2.48 crores as Income from Other Sources and holding it eligible for the purpose of calculation of deduction under Sections 10A and 10B of the Income Tax Act, 1961?"*

2. The facts necessary for deciding the case are that the assessee had maintained, at the relevant time, i.e. AY 2005-06, a unit eligible for the benefit of Section 10A of the Income Tax Act, 1961 [hereafter "the 1961 Act"] and claimed ₹2.48 crores as income from other sources, i.e. interest earned out of fixed deposits. These fixed deposits were derived from export proceeds reported by the assessee to which it was eligible for benefit under Section 10A of the 1961 Act. The Assessing Officer (AO) ruled that the interest income so reported was not entitled to deduction under Section 10A of the 1961 Act. CIT(A) confirmed this view. The ITAT, however, reversed it. The question as to whether incomes such as the one set to be taxed, i.e. interest earned from the fixed deposits which in turn constituted the foreign export business income, are entitled to deduction under Section 10A was the subject of the judgment of this Court in *Riviera Home Furnishing v. ACIT* 2016 (65) taxmann.com 287 (Del).

3. The Court then had the occasion to consider the prevalent ruling of the Supreme Court on this issue in *Liberty India v. CIT* 2009 317 ITR 281.

4. This Court – in *Riviera (supra)* held as follows:

> *"15. In the considered view of the Court, the submissions made on behalf of the Revenue proceed on the basic misconception regarding the true purport of the provisions of Chapter VIA of the Act and on an incorrect understanding of Section 80A (4) of the Act. The opening words of Section 80A (4) read "Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter.....". What is sought to be underscored, therefore, is that Section 80A, and the other provisions in Chapter VIA, are independent of Sections 10A and 10B of the Act. It appears that the object of Section 80A (4) was to ensure that a unit which has*

availed of the benefit under Section 10B will not be allowed to further claim relief under Section 80IA or 80IB read with Section 80A (4). The intention does not appear to be to deny relief under Section 10B (1) read with Section 10B (4) or to whittle down the ambit of those provisions as is sought to be suggested by Mr. Manchanda. Also, he is not right in contending that the decisions of the High Courts referred to above have not noticed the decision of the Supreme Court in Liberty India. The Karnataka High Court in CIT v. Motorola India Electronics Pvt. Ltd. (supra) makes a reference to the said decision. That decision of the Karnataka High Court has been cited with approval by this Court in Hritnik Exports (supra) and Universal Precision Screws (supra). In Hritnik Exports (supra) the Court quoted with approval the observations of the Special Bench of the ITAT in Maral Overseas Ltd. (supra) that "Section 10A/10B of the Act is a complete code providing the mechanism for computing the 'profits of the business' eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act."

5. In view of the above, with which this Court concurs, the question of law has to be and is answered in favour of the assessee and against the Revenue. The appeal is accordingly dismissed.

ITA 691/2012, ITA 149/2013, ITA 170/2016, ITA 223/2016, ITA 577/2016 & ITA 91/2017

6. Arguments heard in part. List on 18.04.2018.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 20, 2018/ajk