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

INCOME TAX APPEAL NO.1373 OF 2016

The Pr.Commissioner of Income Tax-9 … Appellant

V/s.

M/s Gamplus Jewellery (I) Ltd. … Respondent

Mr.Tejveer Singh for the Appellant.

CORAM : AKIL KURESHI AND
SANDEEP K. SHINDE, JJ.
DATE : JANUARY 28, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal dated 27th August, 2015, raising following questions for our consideration:-

> “(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in treating the net interest and not gross interest for the purpose of exclusion under Section 10A of the I.T.Act, 1961?
> (b) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the exemption u/s.10A of the I.T.Act should be computed after excluding freight and insurance

from the total turnover?”

3. Respondent-assessee is a exporter and claims deduction under section 10A of the Income Tax Act, 1961 (“the Act” for short) in respect of the income earned from such activity. Questions (a) and (b) raised by the revenue relate to the assessee's claim of such deduction in relation to the interest income. The assessee failed to convince the Assessing Officer, CIT (Appeals) as well as the Tribunal to grant such deduction to the interest income. However, the Tribunal overruling the orders of the Assessing Officer and CIT (Appeals) held that the disallowance of deduction should be restricted to the net interest income and not gross.

4. In the context of such facts, we fail to see how the revenue can raise questions (a) and (b) simultaneously. The question (a) would arise only if the interest income was recognized for deduction under Section 10A of the Act which is not case in the present appeal. Had it been so, automatically question (b) would not arise.

5. Question (a) thus is wrongly framed. We need therefore, to deal with question (b) only. In this context, the Tribunal correctly held that the question of disallowing the interest can only relate to the net interest and not gross. In other words, in addition to earning interest income, if the assessee is also expending on interest, the disallowance cannot be of interest income ignoring the interest expenditure. Such view is consistently taken by this Court in series of judgments.

6. The sole surviving question has been decided in favour of the assessee while dismissing the revenue's Income Tax Appeal No.2426 of 2009 by order dated 23rd June, 2010 in case of this very assessee. No further discussion therefore is needed.

7. Income Tax Appeal is dismissed.

(SANDEEP K. SHINDE, J.) **(AKIL KURESHI,J.)**

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