

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.10.2019
Pronounced On	01.11.2019

CORAM

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

T.C.A.Nos.1212 & 1213 of 2009

Commissioner of Income Tax
Madurai.

... Appellant in
both T.C.As

Vs

Madura Coats Ltd.,
144 M.G.Road,
Bangalore 560 001.
PAN : AABCM8279K

.... Respondent in
both T.C.As

COMMON PRAYER: Tax Case Appeals filed under Section 260A of the Income Tax Act, to reverse the orders dated 06.02.2009 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench in ITA No.1472/Mds/2008 & ITA No.1473/Mds/2008 against the order of the Commissioner of Income Tax-1, Madurai-2 dated 31.03.2008 in C.No.401/5/2007-08, and C.No.401/6/2007-2008/CIT-1, for the assessment year 1998-1999 and 2003-2004 respectively against the order of the Joint Commissioner of Income tax Company Circle-I, Madurai dated 28.03.2006 in PAN.No.AABCM8279k for the assessment year 1998-1999 and 2003-2004 respectively.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
Assistant by M/s.V.Puspha
Junior Standing counsel
in both T.C.As.

For Respondent : Mr.T.Suryanarayanan for
M/s.King & Partridge
in both T.C.As.

C O M M O N J U D G M E N T

C.SARAVANAN, J.

By this common Judgment, we are disposing both the Tax Case Appeals filed by the Revenue against impugned common order dated 06.02.2009 passed by the Income Tax Appellate Tribunal, Chennai Bench 'C' in I.T.A.Nos.1472 and 1473/Mds/2008.

2.By the impugned order, the Appellate Tribunal has allowed two appeals filed by the respondent-assessee against order two separate orders dated 31.03.2008 passed by the Commissioner of Income Tax-1 Madurai under Section 263 of the Income Tax Act, 1961 for the Assessment Year 1998-99 and Assessment Year 2003-2004 respectively.

3.At the time of admission of these two appeals on 14.12.2009, a Co-ordinate Bench of this Court had framed following two substantial question of law for being answered:-

"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessment order is not erroneous or prejudicial to the revenue, since 90% of the interest was excluded from the business profits in accordance with the decision of this Court in the case of Chinnapandi?

2.Whether on the facts and circumstances of the case the Tribunal was right in holding that the assessment order was not erroneous as it had been rendered following a judicial pronouncement, even though it is clear that the

assessing officer had not applied his mind as to the nature of the interest received to see if it is to be taxed as income from business or income from other sources?

4. Earlier for the assessment year 1998-99, the assessment was completed on 29.3.2001. Later, the said assessment was revised under Section 154 of the Income Tax Act, 1961. This order was appealed against and the effect to the said order was given on 04.08.2004. While passing the said revision order, it was noticed that the respondent had not considered certain amounts while determining profit under Section 15-JA of the Act.

5. Under these circumstances, the assessment was reopened under Section 147 by issuing a notice under Section 148 after getting due approval from the Commissioner of Income Tax-1 Madurai. The said proceeding culminated in an Assessment Order dated 28.3.2006 under section 143 (3) for the Assessment Year 1998-99.

6. As per the said order, the respondent assessee was liable to pay a sum of Rs.4,85,19,047/- as deferential tax. The said order also enclosed a copy of computation of deduction under Section 80-HHC of the Act which reads as under:-

Computation of deduction u/s 80-HHC

1.	Adjusted profit as per computation	30,61,70,735
Less :	90% of Duty Drawback as in Order dt.22.1.2003	5,56,64,924
		25,05,05,811
Less :	Profits from Trading Goods	46,95,267
	Adjusted profit of the business	24,58,10,544
2.	Adjusted Export Turnover	203,09,43,943
3.	Adjusted Total Turnover as per Order dt.22.1.2003	905,68,35,314

A	Profits of Manufactured Goods: Adj. Profit of Business X Adj. ETO / Adj. TTO 24,58,10,544 X 203,09,43,943 ----- - = 905,68,35,314		5,51,21,620
B	Profit on Trading Goods		46,95,267
	Total deduction u/s 80-HHC [5,51,21,620 plus 46,95,267]		5,98,16,887

7. Similarly, for the Assessment Year 2003-2004, the respondent had filed a return on 28.11.2003 declaring a total income of Rs.44,60,38,260/-. The said return was also processed under Section 143(1). Later the return was selected for scrutiny and a notice under Section 143(2) was issued to the respondent. Meanwhile, the assessee had also entered into an international transaction, a reference was also made under Section 92C to the Transfer Pricing Officer- II, Chennai.

8. By an Assessment Order dated 28.03.2006 under section 143 (3), the arrears of tax for the assessment year 2003-2004 was determined as Rs.3,33,81,847/-. The said order also enclosed a copy of computation of deduction under Section 80-HHC which reads as under:

Computation of deduction u/s 80-HHC

Total Turnover:		
Total Turnover as reported		6684352967
Add:		
Sales -tax		202302798
Excise Duty		162529996
Agency commission received		3814072
Revised Total Turnover		705,29,99,833

Adjusted Total Turnover:		
Total Turnover		705,29,99,833
Less: Turnover of Trading goods		41675572
Less: Turnover of Trading goods		701,13,24,261
Revised Total Turnover		

Adjusted Export Turnover:		1352147543

Adjusted Profit of Business		
Business Profit computed		49,79,55,825
Less: 90% of the following:		
1. Rent received	6,26,449	
2. Interest received	3,36,97,516	
3. Agency commission recd	38,14,072	
90% of Rs.4,91,69,545	-----	3,43,24,233

	3,81,38,037	
Profit of the Business		46,36,31,592
Less: Profit from Traded goods		77,33,896
Adjusted Profit of Business		45,58,97,696

Export Turnover of Traded Goods		41675572
Direct cost of Traded Goods		27516450

सत्यमेव जयते

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Export Turnover of Traded Goods		41675572
Indirect cost of Traded Goods:-		
Total Indirect Cost x ETO of Traded Goods		

Total Turnover		
i.e. 1086790398 x 41675572 / 705,29,99,833		64,21,751
= 64,21,751		

I

Profit on Traded Goods:		
Export Turnover of Traded Goods		41675572
Less: Direct Cost	27516450	202302798
Indirect Cost	6425226	162529996
		3814072
Total Direct & Indirect costs	33941676	33941676
		77,33,896

II

सत्यमेव जयते

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Profit on Manufactured Goods:		
Adj. Profit from business x Adj. ETO ----- ----- Adj. TTO i.e 455897696 x 1352147543 ----- --- = 8,79,20,759 7011324261		8,79,20,759

Total u/s 80 - HCC eligible = Rs.77,33,896 + 8,79,20,759 =
9,56,54,655

Allowable deduction @ 50% for the AY 2003-2004 = Rs.4,78,27,328

9.The Commissioner of Income Tax- I invoked the jurisdiction vested under Section 263 of the Income Tax Act, 1961 by construing that the respective assessment orders passed under Section 143(3) dated 28.03.2006 were erroneous and prejudicial to interest of the revenue.

10. By two separate orders dated 31.03.2008, for the respective Assessment Orders dated 28.03.2006 for the two assessment years it was held that the Assessing Officer had committed an error while passing order under section 143(3) which resulted in loss of tax and therefore they were prejudicial to interest of the revenue.

11.It was observed that the Assessing Officer had allowed the claim of the respondent assessee without reference to 1st proviso to Sub-Section (3) of Section 80-HHC and sub-clause (baa) and the explanation below Section 80-HHC of the Act.

12.It was further held that the Assessing Officer had not discussed the correctness of the claim and therefore by no

stretch of imagination it can be held that the Assessing Officer allowed the deduction by application of mind and after due consideration.

13. Therefore, the Assessing Officer was directed to compute the deduction under Section 80-HHC by treating income of the respondent assessee from various sources under the head "Other Sources" in accordance with 1st provision to Sub-Section (3) of Section 80-HCC and Sub-Clause (baa) under Explanation below Section 80-HCC.

14. Aggrieved by the orders of the Commissioner of Income Tax, the respondent-assessee preferred two separate appeals vide ITA Nos. 1472 and 1473 /Mds/2008 for the two assessment years in question before the Income Tax Tribunal, Chennai (Appellate Tribunal for brevity).

15. By the impugned order the Appellate Tribunal has allowed the respective appeals. The operative portion of the impugned order of the tribunal reads as under:-

We have considered the rival submissions carefully in the light of the material on record. We find that decisions are available on both sides to the effect that interest income should be assessed as income from other sources or business income. Depending upon these decisions, again there are lot of decisions available on both sides where deduction under sec . 80HHC should be available in respect of interest income or not. Netting of interest is also permissible as per the decision of the Special Bench of the Tribunal in the case of Lalsons Enterprises (supra). However, on the date when the Assessment Order was finalised the decision of the Hon'ble Jurisdictional High Court in the case of V. Chinnapandi (supra) was clearly available wherein it was held that 90 % of the interest income has to be excluded from business income in view of clause (baa) of Explanation to sec. 80HHC for the purpose of deduction under sec.80HHC. Later on the Hon'ble High Court has held in the case of Dollar Apparals (supra) that 100% of the interest income has to be reduced for the purpose of deduction under sec.80HHC. However,

we find that this judgment was rendered on 21st February 2007 whereas the Assessment Order under SEC. 143(3) of the Act was passed on 28th March 2006. We further find that the Assessing officer has diligently followed the decision of the Hon'ble Jurisdictional High Court in the case of V. Chinnapandi (supra) and reduced 90% of the Interest income from business profits for the purpose of deduction under sec. 80HHC of the Act. At best, the Assessing Officer has followed one of courses legally available and no fault can be found with his order. In fact, the Hon'ble Supreme Court in the case of Malabar Industries Co.Ltd., (supra) has held as under :

"A bare reading of section 263 of the Income - tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income tax officer is erroneous but is not prejudicial to the interests of the Revenue or if it is not erroneous but is prejudicial to the Revenue - recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and

collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

In view of the above we are of the view that the Assessment Order cannot be called erroneous and prejudicial to the interest of the Revenue. Therefore, we quash the revisionary order passed by the CIT and restore that of the Assessing Officer.

16. Heard learned counsel Mr Swaminathan, Senior Standing Counsel for Income Tax for the appellant revenue and Mr. Surya Narayanan for M/s. King and Patridge for the respondent assessee.

17. The learned counsel for the appellant submits that the interest was to be treated as income from other sources and as such when the assessing officer had not done so, it amounted to an order which was erroneous. He further submitted that the decision of the Court in CIT vs V.Chinnapandi (282 ITR 389) has no application to the facts of the present case.

18.The learned counsel for the appellant relied upon the following decisions:-

- i. Gerard Perira vs Income Tax Officer, 2016 SCC OnLine Mad 23008.
- ii. Dollar Apparels vs Income Tax Officer, 2007 SCC OnLine Mad 1112.
- iii. Commissioner of Income Tax vs Cosmos International, 2008 SCC OnLine Del 1455.

19. Per contra, the learned counsel for the respondent- assessee stated that the impugned orders were well reasoned and require no interference and prays for dismissal of the present appeal. Learned Counsel for the respondent assessee relied upon the decision of the Court in the following cases:-

- i. Pandian Chemicals Ltd. vs Commissioner of Income-tax, (2003) 5 SCC 590.
- ii. Commissioner of Income-tax, Thiruvananthapuram vs K.Ravindranathan Nair, (2007) 15 SCC 1.
- iii. ACG Associated Capsules (P.) Ltd. vs Commissioner of Income-tax, Central-IV, Mumbai, (2012) 3 SCC 321.
- iv. Commissioner of Income Tax vs Hewlett Packard Global Soft Ltd., [2017] 87 taxmann.com 182 (Karnataka) (FB).
- v. AVM Cine Products vs The Deputy Commissioner of Income Tax, Chennai, Judgment dated 22.02.2019 in TCA.Nos.884 & 885 of 2005 passed by this Court.

20. We have perused the impugned order and the orders passed by the authorities below. The Hon'ble Supreme Court in Commissioner of Income Tax vs K Ravindranathan Nair, (2007) 15 SCC 1 has held that the formula in Section 80-HHC(3) of the IT Act provides a fraction of export turnover divided by total turnover to be applied to business profits calculated after deducting 90% of the sums mentioned in Clause (baa) of the said Explanation. That, profit incentives and items like rent, commission, brokerage, charges, etc. though formed part of gross

total income had to be excluded as they were "independent incomes" which had no element of export turnover. 90% of the said sum was to be reduced from the gross total income to arrive at the business profits and since the said processing charge was an important component of business profits, it also had to be included in the total turnover in the said formula to arrive at business profits in terms of Clause (baa) of the said Explanation. In paragraph 18 to 28 the Court further held as under:-

18. This batch of civil appeals pertains to Assessment Year 1993-1994, therefore, we have quoted the said section as it stood on the material date.

19. Section 80-HHC of the IT Act was not a charging section. It was an incentive provision. Its object was not to ascertain real income. Section 80-HHC (3) provided for the following formula:

$$\text{Profits of the business X } \frac{\text{Export turnover}}{\text{Total turnover}}$$

20. Section 80-HHC had a head note. That head note said "deduction in respect of profits retained for export business". The said head note was inserted by the Finance Act, 1985 w.e.f. 1-4-1986. Under the original section as inserted by the Finance Act, 1983, the head note stated "deduction in respect of export turnover". Therefore, the very basis shifted from "export turnover" to "retention of profits for export business".

21. Under Section 80-HHC(1) of the IT Act it was inter alia provided that in computing the "total income" a deduction of the profits derived by the assessee from the export of goods shall be made. That, that the words "profits derived from exports" in the said sub-section was substituted for the words "whole of income" by the Direct Tax Laws (Amendment) Act, 1989 w.e.f. 1-4-1989. The expression "derived from" in the said sub-section is narrower than the expression "attributable to", therefore, it is only "profits derived from

exports" which become the basis for working out the said formula in Section 80-HHC(3) of the Act. Similarly, by the Finance Act, 1991 w.e.f. 1-4-1992, for the first time, the expression "profits of the business" stood defined to mean the "profits of the business" as computed under the head "profits and gains of business" under Sections 28 to 44-D of the IT Act. Therefore, before giving deduction under Sections 80-HHC(3) (a), (b) or (c) of the IT Act the gross total income of the assessee being profits from business had to be arrived at in terms of Clause (baa) of the said Explanation. However, one point needs to be noted, namely, while calculating "business profits" the same had to be done in terms of Section 28 to Section 44-D of the IT Act alone. Other provisions like Sections 70 and 71 of the IT Act were excluded. Therefore, in our view, if the said processing charges were a part of gross total income of the taxpayer being profits from business then it had to be included in the total turnover in the above formula. It is important that deduction has to be from profits as understood in the commercial sense. Moreover, under Clause (baa) (1), 90% of any amount referred to in clauses (iii-a), (iii-b) and (iii-c) of Section 28 of the IT Act or any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits. The said expression "included in such profits" indicated that the said processing charges formed part of the gross total income being business profits. This has been clarified by Clause (baa) of the said Explanation which inserted the definition of "profits from business" in the said Section 80-HHC(3) of the IT Act.

22. In the present case the AO had worked out business profits of Rs 1,94,08,220 as gross total income on the basis of income received from cashew business (see pp. 50 and 52 of the SLP paper book). Even according to the assessee, in the above formula his business profits included the abovementioned processing charges. However, according to the assessee, the said charges were not to be included in the total turnover. We are not inclined to accept the contention of the

assesseees. The above discussion indicates that the formula in Section 80-HHC(3) of the IT Act provided for a fraction of export turnover divided by total turnover to be applied to business profits calculated after deducting 90% of the sums mentioned in Clause (baa) of the said Explanation. That, profit incentives and items like rent, commission, brokerage, charges, etc. though formed part of gross total income had to be excluded as they were "independent incomes" which had no element of export turnover. That, the said items distorted the figure of export profits.

24. One point still remains for consideration. On behalf of the assesseees it has been vehemently urged that the abovementioned processing charges, earned by the assesseees by processing raw cashew nuts for third parties, had no nexus with the export business and, therefore, such charges were not includible in the total turnover. It was also further argued that export incentives were admissible only in respect of profits on export sales. In this connection, it was submitted that the assesseees earned processing charges from an activity which had no connection with exports. According to the assesseees, no export turnover arose from processing of raw material by the assesseees for third parties and, therefore, the said receipts did not constitute an element of total turnover. Therefore, according to assesseees, the AO had erred in including the said charges in the total turnover. According to the assesseees, profits derived from local sales were includible in business profits but not in the total turnover.

25. At the outset, we may state that, in the present case, we are dealing with the law as it stood during Assessment Year 1993-1994. At that time Section 80-HHC(3) of the IT Act constituted a code by itself. Subsequent amendments have imposed restrictions/qualifications by which the said provision has ceased to be a code by itself. In the above formula there existed four variables, namely, business profits, export turnover, total turnover and 90% of the sums referred to in Clause (baa) of the said Explanation. In the computation of deduction under Section 80-HHC all four variables had to be taken into account. All four

variables were required to be given weightage. The substitution of Section 80-HHC(3) secures profits derived from the exports of eligible goods. Therefore, if all the four variables are kept in mind, it becomes clear that every receipt is not income and every income would not necessarily include element of export turnover. This aspect needs to be kept in mind while interpreting Clause (baa) of the said Explanation. The said clause stated that 90% of incentive profits or receipts by way of brokerage, commission, interest, rent, charges or any other receipt of like nature included in business profits, had to be deducted from business profits computed in terms of Sections 28 to 44-D of the IT Act. In other words, receipts constituting independent income having no nexus with exports were required to be reduced from business profits under Clause (baa).

26. A bare reading of Clause (baa)(1) indicates that receipts by way of brokerage, commission, interest, rent, charges, etc. formed part of gross total income being business profits. But for the purposes of working out the formula and in order to avoid distortion of arriving at export profits Clause (baa) stood inserted to say that although incentive profits and "independent incomes" constituted part of gross total income, they had to be excluded from gross total income because such receipts had no nexus with the export turnover. Therefore, in the above formula, we have to read all the four variables. On reading all the variables it becomes clear that every receipt may not constitute sale proceeds from exports. That, every receipt is not income under the IT Act and every income may not be attributable to exports. This was the reason for this Court to hold that indirect taxes like excise duty which are recovered by the taxpayers for and on behalf of the Government, shall not be included in the total turnover in the above formula (see CIT v. Lakshmi Machine Works [(2007) 11 SCC 126 : (2007) 6 Scale 168]).

27. In the present case, the processing charges were included in the gross total income from cashew business. That, even according to the assessee the said charges constituted an important

component of gross total income from cashew business. This is not disputed. Therefore, in terms of Clause (baa), 90% of the "independent income" had to be deducted from gross total income to arrive at business profits to which the fraction had to be applied. Since, the processing charges constituted independent income similar to rent, commission, etc., which formed part of the gross total income, the same had to be reduced by 90% as contemplated in Clause (baa) to arrive at business profits. Therefore, the said processing charges were includible in the total turnover in the formula under Section 80-HHC(3) of the IT Act.

28. Before concluding we state that the nature of every receipt needs to be ascertained in order to find out whether the said receipt forms part of/or that it has an attribute of an export turnover. When an indirect tax is collected by the taxpayer on behalf of the Government the tax recovered is for the Government. It may be an income in the conceptual sense or even under the IT Act but while working out the formula under Section 80-HHC (3) of the IT Act and while applying the four variables one has to ascertain whether the receipt has an attribute of export turnover. An indirect tax like excise duty does not have that element of export turnover as understood in the above formula. As stated above, it is recovered by the taxpayer on behalf of the Government. Therefore, in the present cases, our judgment in CIT v. Lakshmi Machine Works [(2007) 11 SCC 126 : (2007) 6 Scale 168] has no application.

21. This court while passing order dated 22.2.2019 in T.C.A. Nos.884-85 of 2005 where one of us (Hon'ble Dr. Justice Vineet Kothari was a party) has also observed as under:-

20. It may be stated here that Clause (baa) of Explanation to Section 80 HHC deals with items like rent, commission, brokerage charges et cetera which though form part of the gross total income, have to be excluded from the ambit of the scope of the words "export profit" to the extent of 90% of

such receipts, as the legislature felt that 90% of such receipts are presumably not directly related to the export of goods and the same to that extent cannot be termed as profits from export business and in that context, for computing the "Export Turnover", the Supreme Court made the aforesaid observation and held on facts that processing charges received by the Assessee on export of the casual nuts and processing charges from other exporters for processing their casual nuts in his own factory will be export profit to the extent of 10% only as per Clause (baa) of the Explanation.

23. As far as the interest income is concerned, Clause (id) of Sub-section (2) of Section 56 clearly provides that income by way of interest on securities will be taxable under Section 56, if only such interest income is not chargeable to income tax under the head "Profits and gains of business or Profession". Thus, Interest Income earned in the ordinary course of business is excluded from Section 56 of the Act. An interest income earned by the Assessee or received by the Assessee during the year in question, in the ordinary and regular course of business is an integral part of business income itself. Like hundreds of business decisions taken by the Assessee in its business, the deposit of money with the bank either under compulsion like maintaining the margin money with the Bank or for opening of foreign letter of credit or for obtaining the loan itself or cash credit facility or the voluntary deposits made by it of the surplus funds, which would otherwise be lying idle, the Assessee, in its own business or commercial prudence, makes a deposit in Bank and incidentally earns an interest through it or interest from staff loans or customers on the belated payments and such interest income is nothing but its regular business income.

24. Section 56 of the Act, providing for "Income from Other Sources". cannot be applied at all to such interest income. The income from Business need not be directly related only to sale of goods or services. It can be from the sources like Bank deposits, which are idle or inactive sources and do not involve any actual trading or manufacturing

activity on the part of the Assessee. Therefore, interest income earned by the Assessee in the ordinary course of business, cannot be said to be excluded from the head "Income from Business or Profession" in Part D, comprising of Sections 28 to 44DB in Chapter IV, which deals with computation of the total income in the Heads of Income as per Section 14 of the Act. If by no stretch of imagination, such interest income could be included under the Head "Profits and gains of business or profession" only then it could fall in the residuary clause of "Income from Other Sources" under Section 56 of the Act and not otherwise.

22. Section 263 of the Income Tax Act, 1961 is not intended to be invoked for every type of mistake or error committed by the Assessing Officer. It is only when an order is erroneous, it is attracted. Though the phrase "prejudicial to the interests of the revenue" in Section 263 is of wide import and is not confined to loss of tax, it has been held by the Honourable Supreme Court in *Malabar Industries Co Ltd* 243 ITR 83 that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue.

23. The scheme of computing of total income under various heads in Chapter IV of the Income Tax Act, 1961 reveals that "Income from Other Sources" is only those income which cannot be brought to tax under any of the specific heads of income in the provisions preceding Section 56 in Chapter IV of the Income Tax Act, 1961. An income received in the ordinary course of business is an integral part of the regular income of the assessee as was held by a coordinate bench of this court in *M/s. AVM Cine Products* case. The learned counsel for the revenue also fairly conceded that the issue is squarely covered by the decision cited on behalf of the respondent assessee.

24. Since there is no infirmity in the calculations made by the Assessing Officer while computing the deductions in view of the above decisions cited on behalf of the assessee, the view of the Commissioner of Income Tax that the Assessing Officer committed an error while passing the respective Assessment Orders which resulted in loss of revenue prejudicial to interest

of revenue cannot be sustained. Consequently, the direction to the Assessing Officer to compute deduction under Section 80 HHC in the order of the Commissioner of Income Tax is without any basis. We are therefore of the view that the Commissioner of Income Tax erred in invoking the revisional powers under Section 263 of the Income Tax Act, 1961 in the facts of the present cases.

25. In the light of the above discussion, we are satisfied that the impugned orders of the Income Tax Appellate Tribunal setting aside the orders of the Appellant CIT require no interference. Therefore, the questions of law raised are answered against the Appellant CIT.

26. We therefore dismiss the two appeals filed by the Commissioner of Income Tax. No cost.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Income Tax Appellate Tribunal,
Madras 'C' Bench.

2. Commissioner of Income Tax
Madurai.

3. The Joint Commissioner of Income Tax
Income Tax Company Circle-I

4. The Commissioner of Income Tax-1
Madurai-2

+1 cc to Mr. M. Swaminathan Standing Counsel sr90517

+1 cc to M/s. King & Partridge Advocate sr91051

+1 cc to M/s. King & Partridge Advocate sr91050

T.C.A. Nos. 1212 & 1213 of 2009

aa04/12/2019