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

\+ ITA 827/2018

THE PR. COMMISSIONER OF INCOME TAX -5..... Appellant
Through: Mr.Ruchir Bhatia, Adv.
versus

L T FOODS LTD. ..... Respondent
Through: Mr.Sanat Kapoor, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE VINOD GOEL

<u>O R D E R</u>

% **09.01.2019**

Learned counsel for the respondent-assessee, on instructions, submits that the Assessing Officer while passing the appeal effect order would be entitled to examine the claim under Section 80HHC in terms of the decision in ***Topman Exports vs. CIT. Mumbai (2012) 342 ITR 49 (SC).***

Learned counsel for the Revenue states, that the statement made by the respondent-assessee should be taken on record as the order passed by the Income Tax Appellate Tribunal is somewhat ambiguous in this regard.

We take the statement made by the counsel for the respondent-assessee on record. Deduction under Section 80HHC of the Act, in terms of the directions given in para 27 of the order passed by the Income Tax Appellate Tribunal on 26.02.2018, would abide and follow the decision of the Supreme Court in the cases of ***Topman Exports vs. CIT Mumbai (2012) 342 ITR 49 (SC).*** As the appeal on the said issue is been disposed of with consent and statement made by counsel, no specific substantial question of law is being framed.

We are not inclined to interfere with the findings of ITAT on the question of taxability of interest, with reference to the interest income earned from FDRs kept as margin money to avail credit facilities for the purpose of making export sales. The said interest income would be taxable as business profits of the assessee. Accordingly, the principle of 'netting of' would be applicable as held by the Delhi High Court in ***CIT vs. Sriram Honda Power Equipment (2007) 289 ITR 475 (Del.)*** and the judgment of the Supreme Court in ***ACG Associated Capsules Pvt. Ltd. & Ors. vs. CIT, Central-IV Mumbai and Ors. (2012) 343 ITR 89 (SC).***

Similarly, we are not inclined to interfere with the direction for including insurance under Clause (1) of Explanation (baa) to Section 80HHC of the Act. This issue was examined and answered by the Bombay High Court in ***CIT vs. Pfizer Ltd. (2011) 330 ITR 62 (Bom.)***, with which we respectfully agree.

The last issue raised in the present appeal by the Revenue relates to discount given by the assessee to the foreign buyers on account of quality/specification of exported goods, they being different from approved samples/quality agreed.

This issue was earlier set aside and remanded to be decided afresh by the Commissioner of Income Tax (Appeals) after taking into account additional evidence. The Commissioner of Income Tax (Appeals) had accordingly asked for the remand report from the Assessing Officer. Respondent-assessee placed and relied upon papers and documents to show that the foreign buyers had questioned quality, variance and difference in moisture content in the goods supplied. Discount was remitted to the foreign buyers and payments were made through banking channels. Findings in favour of the respondent-assessee recorded by the first appellate authority and affirmed by the Tribunal are the findings of fact.

Assessing Officer in the remand report had objected to additional documents being taken on record. This contention/submission was rejected in view of the directions of the Tribunal in the first round. Remand report did not specifically deal with merits, documents relied and whether the respondent-assessee had discharged the onus. Documents filed by the respondent-assessee and relied before the Commissioner of Income Tax (Appeals), have not been placed on record with the appeal paper book. In these circumstances, we are unable to hold that any substantial question of law arises on the fourth issue on the ground of factual perversity etc.

We may clarify that the Assessing Officer while computing deduction under Section 80HHC, would comply and abide by the ratio in ***Commissioner of Income Tax vs Avani Exports 232 Taxman 357 (2015/ Gujarat High Court in Avani Exports & Ors. vs CIT Rajkot & Ors. (2012) 348 ITR 391 (Guj).***

Recording the aforesaid, we dispose of the present appeal without any order as to costs.

SANJIV KHANNA, J.

VINOD GOEL, J.

JANUARY 09, 2019/neelam