

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 216 of 2013
Date of decision: 21.1.2020

Vardhman Holdings Ltd.

.. Appellant

v.

The Commissioner of Income Tax, Range-I, Ludhiana and another
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Manpreet Singh Kanda, Advocate for the appellant.

Mr. Rajesh Katoch, Senior Standing Counsel and
Ms. Pridhi Jaswinder Sandhu, Advocates for the respondents.

...

AVNEESH JHINGAN, J.

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 28.12.2012 passed by the Income Tax Appellate Tribunal, Chandigarh (for short, 'the Tribunal'). Following substantial questions of law have been claimed:

- “i) Whether on true and correct interpretation of Section 80HHC, the Income Tax Appellate Tribunal erred in holding that gross rent receipts from employees without adjusting expenses incurred by the employer on running and maintenance of such accommodations are to be excluded from the eligible profits of business for section 80HHC of Income Tax Act.

- ii) Whether on true and correct interpretation of Section

80HHC read with Section 10B(6)(iii) of the Income Tax Act the tribunal has erred in holding that report turnover of the unit whose profits are allowed a deduction under Section 10B of the Income Tax Act is not to be included in the export turn over for the purpose of calculating the deduction under Section 80HHC of the Income Tax Act, 1961?

- iii) Whether on true and correct interpretation of Section 80HHC read with Section 80-IA/80-IB of Income Tax Act, the Income Tax Appellate Tribunal erred in holding that amounts of profits of Auro Unit V, eligible for deduction under Section 80-IB of Income Tax Act are to be excluded while calculating eligible profits for deduction under Section 80HHC of Income Tax Act?
- iv) Whether the Income Tax Appellate Tribunal is correct in law in holding that gross interest received from suppliers without adjusting interest paid on working capital borrowings should be excluded from eligible profits for deduction under Section 10B of Income Tax Act?
- v) Whether the Income Tax Appellate Tribunal is correct in law in apportioning the Head Office expenses amongst various units claiming deduction U/s 10-B/80-IA/80-IB of the Act, when units are maintaining their separate books of accounts?”

For question (iv), following question has been substituted:

- “ vi) Whether in facts and circumstances the ITAT is correct

in law in directing the A.O. to grant the benefit of interest received/receivable on delayed payments relatable to export sales as opposed to total sales affected by the assessee?”

The facts in brief are that the assessment year involved is 2001-02. The assessee filed return declaring a loss, the return was revised and the loss declared earlier was reduced. The assessment was finalised under Section 143(3) of the Act on 30.3.2004 wherein the Assessing Authority disallowed various deductions claimed by the assessee. First appeal filed was partly allowed on 25.1.2008. Aggrieved of the order of the 1st Appellate Authority, both the assessee and the revenue preferred appeals. The Tribunal vide impugned order partly allowed both the appeals.

With regard to question (i), the facts are that the assessee received rent mainly from its employees who were using the company accommodation. The claim of the assessee before the Tribunal was that as per explanation (baa) to Section 80HHC of the Act, the depreciation on the building owned by the assessee should be allowed. The contention was rejected by the Tribunal placing reliance upon a decision of the Supreme Court in Acg Associated Capsules P. Ltd. v. C.I.T., Central-IV, Mumbai, (2013) 343 ITR 89.

The same issue is raised by Ms. Radhika Suri, learned senior counsel for the assessee and is not well-founded. Relevant portion of Section 80HHC of the Act is reproduced below:

“Deduction in respect of profits retained for export business.

80HHC. (1) Where an assessee, being an Indian company or

a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, [a deduction to the extent of profits, referred to in sub-section (1B)], derived by the assessee from the export of such goods or merchandise.

xx

xx

xx

(baa) “profits of the business” means the profits of the business as computed under the head “Profits and gains of business or profession” as reduced by--

- (1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and
- (2) the profits of any branch office, warehouse or any other establishment of the assessee situate outside India.”

The explanation provides for reduction from the “profits and gains of business or profession”, receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature. Depreciation is not receipt of a similar nature as mentioned in the explanation.

Supreme Court in **Acg Associated Capsules P. Ltd.'s case** (**supra**) held that the explanation is to be construed as per the plain natural meaning of the words in it. Relevant portion is reproduced below:

9. Explanation (baa) extracted above states that "profits of

the business" means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by the receipts of the nature mentioned in clauses (1) and (2) of the Explanation (baa).

Thus, profits of the business of an assessee will have to be first computed under the head "Profits and Gains of Business or Profession" in accordance with provisions of Section 28 to 44D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under Sections 30 to 44D have to be allowed as expenses. After including such receipts of income and after deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head "Profits and Gains of Business or Profession" from which deductions are to be made under clauses (1) and (2) of Explanation (baa).

10. Under Clause (1) of Explanation (baa), ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head "Profits and Gains of Business or Profession". The expression "included any such profits" in clause (1) of the Explanation (baa) would mean only such receipts by way of brokerage, commission, interest,

rent, charges or any other receipt which are included in the profits of the business as computed under the head "Profits and Gains of Business or Profession". Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under Sections 30 to 44D of the Act and is not included in the profits of business as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of receipts cannot be reduced under Clause (1) of Explanation (baa) from the profits of the business. In other words, only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to Section 80HHC.

11.Similarly, Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in Explanation (baa), the words "receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits" will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head "Profits and Gains of Business or Profession" referred to in the first part of the Explanation (baa). Accordingly, if any quantum of any receipt of the nature

mentioned in clause (1) of Explanation (baa) has not been included in the profits of business of an assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt cannot be deducted under Explanation (baa) to Section 80HHC.”

The receipts mentioned in the explanation are the actual payments received like brokerage etc. The phrase “receipt of similar nature” will not increase its scope to include depreciation which is not on same footing as brokerage, commission etc. The finding recorded by the Tribunal on the said issue is upheld. The question is answered against the assessee.

As regards question (ii), learned counsel for the parties are *ad idem* that the issue is covered in favour of the assessee by a decision of the Division Bench of this Court in **M/s Mahavir Spinning Mills Ltd. v. Commissioner of Income Tax, Ludhiana and another**, 2017 (391) ITR 290.

Question (iii) claimed does not arise from the order of the Tribunal and hence no adjudication for the same is called for.

The facts relevant for substituted question (iv) are that during the relevant assessment year, the assessee received interest on the delayed payment. The interest was for both types of payments received late, i.e. for the goods exported and sold locally. The grievance of the appellant before the Tribunal was with regard to non-allowance of exemption under Section 10B of the Act. The Tribunal relying upon its decision in assessee's own case for the assessment year 2003-04 directed the Assessing Authority to allow deduction under Section 10B of the Act where the interest is received

by the assessee on delayed payments relatable to export and further gave following directions:

“35. The Tribunal had directed the Assessing Officer to verify and allow deduction under section 10B of the Act where the interest is received/receivable by the assessee from its customers on delayed payments, relatable to export sales made by it. However, where such interest due from the parties was not so relatable to the export sale made by the undertaking, it was held that the assessee was not entitled to the benefit of exemption under section 10B of the Act on such other income. Following the above said parity of reasoning we find no merit in the ground of appeal No. 10 raised by the assessee and the same is dismissed.”

The argument raised is that the direction of the Tribunal is in violation of Section 10B(4) of the Act. The relevant portion of the provision is reproduced below:

“Special provisions in respect of newly established hundred per cent export-oriented undertakings.

10B. (1) Subject to the provisions of this section, a deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer

software as the case may be, shall be allowed from the total income of the assessee.

XX

XX

XX

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.”

Sub-section (4) to Section 10B of the Act gives a formula for working out the profits from export of articles. Once it is held that interest on delayed payment relating to export is eligible under Section 10B of the Act, thereafter the calculation is to be done as per sub-section (4) to Section 10B of the Act. The decision of the Tribunal allowing only interest relating to export sales under Section 10B of the Act is upheld, however, the directions for verification are modified to the extent that the Assessing Officer shall assess the interest received on delayed payments as per provisions of Section 10B(4) of the Act. The question is answered in favour of the assessee.

The answer to question (v) is against the assessee. The appellant is having various units some of them being eligible to deduction under Section 10B of the Act being 100% export-oriented undertaking and others not eligible under Section 10B of the Act. There were expenses incurred for the head office which was working for eligible and non-eligible units. With a view to check that more than the ordinary profits may

The relevant provisions to be relevant are Sections 10B(7) and 80-IA (10) of the Act, same are reproduced below:

10B. XX XX XX

XX XX XX

[illegible]

MANOJ KUMAR
2020.01.30 12:46
I attest to the accuracy and
authenticity of this document
High Court, Chandigarh

of profits as may be reasonably deemed to have been derived therefrom.”

Sub-section (7) of Section 10B of the Act provides that the provisions of sub-sections (8) and (10) of Section 80-IA shall apply. Sub-section (10) of Section 80-IA of the Act empowers the Assessing Officer to consider a reasonable profit derived by the eligible business, in case there is a close connection between the eligible assessee and another person or the business is so arranged that the business transacted between them produces higher profit than expected.

The contention raised by learned counsel for the revenue deserves acceptance that the expenditure incurred by the head office is a common expenditure for eligible and non-eligible units run by the appellant-company, the same needs to be apportioned to determine the actual profits of both the types of units. The finding recorded by the Tribunal on the said issue warrants no interference. The question is answered against the assessee.

In view of the above, the appeal is disposed of.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

21.1.2020
mk

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No