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IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NOS. 146, 148 & 149 OF 2017.

TAX APPEAL NO. 146 OF 2017

M/s. Goa Carbon Ltd.
Having office at Dempo House,
D. B. Marg, Campal, Panaji Goa ...Appellant

Versus

1. The Assistant Commissioner of Income
Tax Circle 1(1), Panaji, Goa,
having his office at Aayakar Bhavan,
Patto, Panaji, Goa – 403 001.
2. The Principal Commissioner of Income Tax,
Having his office at Aayakar Bhavan,
Patto, Panaji, Goa – 403 001. ..Respondents

With

TAX APPEAL NO. 148 OF 2017

1. M/s. Goa Carbon Ltd.
Having office at Dempo House,
D. B. Marg, Campal, Panaji Goa ...Appellant

Versus

1. The Assistant Commissioner of Income
Tax Circle 1(1), Panaji, Goa,
having his office at Aayakar Bhavan,
Patto, Panaji, Goa – 403 001.
2. The Principal Commissioner of Income Tax,
Having his office at Aayakar Bhavan,
Patto, Panaji, Goa – 403 001. ...Respondents

With

TAX APPEAL NO. 149 OF 2017

M/s. Goa Carbon Ltd.,
Having office at Dempo House,
D. B. Marg, Campal, Panji Goa.

...Appellant

Versus

1. The Assistant Commissioner of Income Tax, (Circle 1 (1), Panaji, Goa, having his office at Aayakar Bhavan, Patto, Panaji, Goa- 403 001. Panaji and 2 ors.

2. The Principal Commissioner of Income Tax, having his office at Aayakar Bhavan, Patto, Panaji, Goa – 403 001.

...Respondents

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar, Advocate for the Appellants in all the Appeals.

Ms. Susan Linhares, Advocate, for the Respondents in all the appeals.

**CORAM: SUNIL P. DESHMUKH &
M. S. SONAK, JJ**

DATED: 4th AUGUST, 2021

Oral Judgment (Per Sunil P. Deshmukh, J)

1. These are three appeals preferred by the assessee against the common order passed by the Income Tax Appellate Tribunal, Panaji dated 23/11/2016 relating to the assessment year 1995-1996, 1997-1998 and 1998-99. The appellant -assessee under the Income Tax Act, 1961[IT Act] is engaged in manufacture and sale-export of Calcined Petroleum Coke (CPC). In the regular course of assessment, the Assessing Officer had disallowed deduction by appellant following directions issued by Commissioner of Income Tax under section 263 holding that

product exported by the assessee as 'mineral oil'. While the matter was taken by the appellant to High Court, the High Court by common Judgment and order held that CPC manufactured by the appellant is not mineral oil within the meaning of section 80HHC (2) (b) (i).

2. While giving effect to aforesaid order, the Assessing Officer partially allowed the claims of the appellants under section 80HHC of the IT Act under his orders, restricting the deduction to lesser amounts as against the claims for deduction made by the assessee. Reduction in deduction was on account of Explanation (baa) to section 80 HHC being income received from leasing out its plant and machinery. Said orders of the Assessing Officer were taken in appeal by the Assessee before Commissioner of Income Tax (Appeals)(CIT (A)) who has remanded for re-computation of deduction under 80HHC for consideration of net income from leasing after allowing the expenditure incurred in earning the income. Aggrieved by appellate orders, the Assessee had been before the Income Tax Appellate Tribunal(ITAT) and ITAT has dismissed the appeals under a common order dated 23/11/2016. Against said order, the assessee has preferred present appeals under section 260A wherein following questions of law have been framed:

(i) Whether the income earned by the Appellant from leasing its plant and machinery in course of its business activity of leasing is in the nature of rent as contemplated under Explanation (baa) to Section 80 HHC of the Act?

ii) Whether the income earned by leasing plant and machinery is synonymous to the words “rent” or “charges” as contemplated in Explanation (baa) to Section 80 HHC of the Act?

3. Learned Senior Advocate, Mr. Rivankar submits that assessee is engaged in business of manufacture and sale-export of Calcined Petroleum Coke, and has purchased plant and machinery which were leased out and had earned income from the same. He contends that the authorities hitherto have not discussed the grounds raised by the appellant that the lease income from business operations are neither rent nor commission or charges or any other receipts of the nature as contemplated in Explanation (baa) to section 80 HHC and as such matters be remanded.

4. It is the contention of learned Advocate, Ms. Susan Linhares, appearing for the respondent-revenue that, it is undisputed position, income earned from hiring plant and machinery has no nexus to the export by the appellant and that it is only the net income and not the gross one is to be deducted pursuant to Explanation (baa) to Section 80HHC.

5. She submits, the Assessing Officer has found that not entire income earned by the appellant is from export of its product, certain portion of the profit is earned by the appellant by leasing and hiring out its plant and machinery referring to the same as rent (rentals) and thus does not appear to have committed any error in disallowing certain deduction for the concerned assessment years.

6. It would be pertinent to refer to that, section 80HHC of the IT Act, allows in computing total income of the assessee, a deduction to the extent of profits derived by assessee from exports of goods or merchandise. However, there is a Explanation (baa) to the section. Profits of business would mean, profits of business as reduced by 90%, inter alia, of receipts by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature included in such profits.

7. All the three authorities hitherto, have observed that the assessee is in the business of manufacture of CPC, and has purchased plant and machinery, but, the plant and machinery were given on lease by the assessee. The assessee has derived rental income from the plant and machinery given on lease. The assessee does not dispute that the reduction of its claim is on account of income earned by the assessee by leasing out the plant and machinery.

8. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax Vs. K. Ravindranathan Nair reported in 2007 (15) SCC 1*** and this Court in the case of (***Sesa Goa Ltd. Vs. CIT Tax Appeal No.53 of 2006***), have considered that rental income from leasing out plant and machinery is hit by Explanation (baa) to Section 80HHC of the IT Act in computation of total income.

9. The Appellate authorities have also considered that it is net of the lease income from plant and machinery and not the gross income which is to be considered for exclusion from profits of business (while computing deduction under section 80HHC in accordance with Explanation clause (baa)).

10. The Revenue is not in appeal so far as 90% of income, from leasing plant and machinery, is to be taken into account for exclusion from profits of business.

11. The assessee has derived income from leasing out plant and machinery. The Supreme Court in **Ravindranathan Nair's** case (2007) 15 SCC 1, has considered in paragraph 19 as under:

In our view, for the above reasons, the said processing charges, which was part of gross total income, was an independent income like rent, commission, brokerage etc. and, therefore, 90% of the said sum had 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) to the said Explanation.

12. Further, in paragraph 22 it has been observed to the effect that in terms of Clause (baa), 90% of the independent income had to be deducted from gross total income to arrive at business profits. It has further been observed that processing charges

constituted independent income similar to rent, commission, etc., which formed part of the gross income, the same had to be reduced by 90% as contemplated in clause (baa) to arrive at business profits.

13. In **Sesa Goa Ltd**, this Court had considered that receipts from hiring barges would be in the nature of rent or similar to rent and, therefore, would fall in items specified in clause (baa) of Explanation to section 80HHC.

It has been observed, the assessee has not been able to show that such an activity had any nexus to the export activity and, thus, the decision in **Ravindranathan Nair's** case had been followed.

14. In the present matter as well, the assessee is not at loggerheads with the revenue that the amount sought to be deducted from the profits of business, under section 80HHC is not an income earned from export. It is the income earned by hiring plant and machinery. The situation thus as has been observed by the authorities hitherto is squarely covered by the decisions in **Ravindranathan Nair's** case and **Sesa Goa (supra)**.

15. In the circumstances, there is no point in remitting the matter to the authorities. The income earned from hiring out plant and machinery would have to be deducted pursuant to Explanation (baa) to Section 80 HHC.

16. Having regard to emerging position, what has been disallowed pursuant to Explanation (baa) to Section 80HHC is the income from hiring out plant and machinery which is independent of exports. The substantial questions of law as have been framed, having regard to the decisions of the Supreme Court in *CIT Vs. K. Ravindranathan Nair* (supra) and this High Court's decision in *Sesa Goa* (supra) and further the decision of *M/s. ACG Associated Capsules Pvt. Ltd Vs. CIT*, 2012 (3) SCC 321 dated 30/7/2018 are answered in the affirmative.

17. All appeals stand disposed of in the aforesaid terms.

M. S. SONAK, J

SUNIL P. DESHMUKH, J

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PEREIRA
Digitally signed
by MARIA AURA
PEREIRA
Date:
2021.08.26
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