



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

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CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case (Appeal) No.1218 of 2009

M/s. Stanco Traders,
132, Patti Street,
Sivakasi.

... Appellant

Versus

The Deputy Commissioner of Income Tax
Circle I, Katcheri Road,
Virudhunagar.

... Respondent

Prayer: Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "B" Bench Chennai, dated 06.02.2009 in I.TA.No.2114/Mds/2007, preferred against the order dated 15.06.2007 made in ITA.No.457/2006-07, passed by the Commissioner of Income Tax (Appeals)-II, Madurai, against the order dated 22.12.2006, made in PAN/GIR.No.AADFS3682F, passed by the Deputy Commissioner of Income Tax, Circle I, Virudhunagar.

For Appellant	:	Mr.S.Sridhar
For Respondent	:	Mr.M.Swaminathan, Senior Standing Counsel assisted by Mrs. S.Premalatha Junior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant/assessee, challenging the order dated 06.02.2009 passed by the Income Tax Appellate Tribunal, 'B' Bench Chennai, in I.T.A.No.2114/Mds/2007, relating to the assessment year 2002-03.

2. By order dated 24.11.2009, this court admitted the aforesaid tax case appeal on the following substantial questions



of law:

"1. Whether the Appellate Tribunal is correct in law in concluding that the re-assessment framed was correct and valid on the facts and in the circumstances of the case even though there was no escapement of income as well as the computation of deduction u/s 80 HHC of the Act was in accordance with the provisions of the Act while filing the return of income disclosing the total taxable income for the Assessment year under consideration?

2. Whether the Appellate Tribunal is correct in law in sustaining the action of the respondent in framing the re-assessment for the purpose of re-computing the deduction u/s 80HHC of the Act while excluding the hire charges as well as the interest from the purview of profits of business being the one limb of the statutory formula prescribed for such quantification especially overlooking the live nexus as well as the nature of income earned which were subjected to exclusion?"

3. Today, when the appeal is taken up for consideration, the learned counsel for the appellant/assessee as well as respondent/Revenue jointly submitted that the first question of law raised in this appeal has already been considered and decided by the Supreme Court in favour of the Assessee in the case of ACG Associated Capsules (P) Ltd. Vs. Commissioner of Income - tax, Central - IV, Mumbai reported in (2012) 18 taxmann.com 137 (SC), the relevant passage of which, is usefully extracted hereunder:

" 3. For appreciating the second issue, we may refer very briefly to the facts of the case. For the assessment year 2003-04, the assessee filed a return of income claiming a deduction of Rs.34,44,24,827/- under Section 80HHC of the Act. The Assessing Officer passed the assessment order deducting ninety per cent of the gross interest and gross rent received from the profits of business while computing the deduction under Section 80HHC and accordingly restricted the deduction under Section 80HHC to Rs.2,36,25,053/-. The assessee filed an appeal against the assessment order before the Commissioner of Income - Tax (Appeals), who confirmed the order of the Assessing Officer excluding ninety per cent of the gross interest and gross rent received by the assessee while computing



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the profits of the business for the purposes of Section 80HHC. Aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal held, relying on the decision of the Delhi High Court in CIT v. Shri Ram Honda Power Equip (2007) 289 ITR 475 / 158 Taxman 474, that netting of the interest could be allowed if the assessee is able to prove the nexus between the interest expenditure and interest income and remanded the matter to the file of the Assessing Officer. The Tribunal also remanded the issue of netting of the rent of the Assessing Officer with the direction to find out whether the assessee has paid the rent on the same flats against which rent has been received from the staff and if such rent was paid then such rent is to be reduced from the rental income for the purpose of exclusion of business income for computing the deduction under Section 80HHC. Against the order of the Tribunal, the Revenue filed an appeal before the High Court and the High Court has directed that on remand the Assessing Officer will decide the issue in accordance with the judgment of the High Court in CIT v. Asian Star Co.Ltd. (2010) 326 ITR 56 (Bom.) in which it has been held that while determining the profits of the business as defined in Explanation (baa) to Section 80HHC, ninety per cent of the gross receipts towards interest and not ninety per cent of the net receipts towards interest on fixed deposits in banks received by the assessee would be excluded for the purpose of working out the deduction under Section 80HHC of the Act.

"14. On a perusal of the judgment of the High Court in [Commissioner of Income-Tax v. Asian Star Co. Ltd.](#) (supra), we find that the reason which weighed with the High Court for taking a different view, is that rent, commission, interest and brokerage do not possess any nexus with export turnover and, therefore, the inclusion of such items in the profits of the business would result in a distortion of the figure of export profits. The High Court has relied on a decision of this Court in [Commissioner of Income-Tax v. K.Ravindranathan Nair](#) [(2007) 295 ITR 228/165 Taxman 282 (SC)] in which



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the issue raised before this Court was entirely different from the issue raised in this case. In that case, the assessee owned a factory in which he processed cashew nuts grown in his farm and he exported the cashew nuts as an exporter. At the same time, the assessee processed cashew nuts which were supplied to him by exporters on job work basis and he collected processing charges for the same. He, however, did not include such processing charges collected on job work basis in his total turnover for the purpose of computing the deduction under [Section 80HHC](#) (3) of the Act and as a result this turnover of collection charges was left out in the computation of profits and gains of business of the assessee and as a result ninety per cent of the profits of the assessee arising out of the receipt of processing charges was not deducted under clauses (1) of the Explanation (baa) to [Section 80HHC](#). This Court held that the processing charges was included in the gross total income from cashew business and hence in terms of Explanation (baa), ninety per cent of the gross total income arising from processing charges had to be deducted under Explanation (baa) to arrive at the profits of the business. In this case, this Court held that the processing charges received by the assessee were part of the business turnover and accordingly the income arising therefrom should have been included in the profits and gains of business of the assessee and ninety per cent of this income also would have to be deducted under Explanation (baa) under [Section 80HHC](#) of the Act. In this case, this Court was not deciding the issue whether ninety per cent deduction is to be made from the gross or net income of any of the receipts mentioned in clause (1) of the Explanation (baa).

15. The Bombay High Court has also relied on the Memorandum explaining the clauses of the Finance Bill, 1991 contained in the circular dated 19.12.1991 of the Central Board of Direct Taxes to come to the conclusion that the Parliament intended to exclude items which were unrelated to the export turnover from the computation of deduction and while excluding such items which are unrelated to export for the purpose of [Section 80HHC](#), Parliament has taken due note of the fact that the exporter



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assessee would have incurred such expenditure in earning the profits and to avoid a distorted figure of export profits, ninety per cent of the receipts like brokerage, commission, interest, rent, charges are sought to be excluded from the profits of the business. In our considered opinion, it was not necessary to refer to the explanatory Memorandum when the language of Explanation (baa) to [Section 80HHC](#) was clear that only ninety per cent of receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits computed under the head profits and gains of business of an assessee could be deducted under clause (1) of Explanation (baa) and not ninety per cent of the quantum of any of the aforesaid receipts which are allowed as expenses and therefore not included in the profits of business of the assessee."

4. Following the aforesaid judgment, which squarely applies to the facts of the present case, the first substantial question of law is answered in favour of the Assessee and against the Revenue and the order of the Tribunal stands set aside to that extent.

5. In view of the above, the second substantial question of law is left open for consideration in an appropriate case.

6. Accordingly, the Tax Case Appeal stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

av/rsh

To

1. The Income Tax Appellate Tribunal,
'B' Bench Chennai,
2. The Deputy Commissioner of Income Tax
Circle I, Katcheri Road,
Virudhunagar.



3.The Commissioner of Income Tax (Appeals)-II,
Madurai.

+1cc to Mr.S.Sridhar, Advocate SR.No.68874

+1cc to Mr.M,.Swaminathan, Advocate SR.No.68875

T.C.A.No.1218 of 2009

SSV(CO)
GN(25/01/2022)