IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

T.C.A.Nos.127 & 128 of 2012

M/s.Shri Jayajothi & Co Ltd.,
70 Alagai Nagar,
Rajapalayam ...Appellant in both the appeals

Versus

The Asst. Commissioner of
Income Tax, Circle I,
Virudhunagar. ...Respondent in both the appeals

T.C.A.No.127 of 2012: Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "C" Bench, dated 07.08.2006 passed in I.T.A.No.2904 and 2905/Mds/04.

Against the order of the Commissioner of Income-Tax (Appeals)-II, Madurai dated 16.08.2004 and made in I.T.A. Nos. 53/04-05 and 54/04-05 for the Assessment year 2000-2001 and 2001-2002 respectively.

Against the order of the Deputy Commissioner of Income-Tax, Circle I, Virudhunagar and Assistant Commissioner of Income-Tax, Circle I, Virudhunagar dated 22.03.2004 and 28.12.2007 and made in PAN/GIR No. AACCS0542E:S-1004/DCIT/VNR and AACCS0542K/S-1004/AC/VNR for the Assessment year 2000-2001 and 2001-2002 respectively.

T.C.A.No.128 of 2012: Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai, dated 22.09.2006 passed in I.T.A.Nos.192 to 195/Mds/06.

Against the order of the Commissioner of Income-Tax (Appeals)II (I/c) Madurai dated 21.03.2003 and made in I.T.A. Nos. 499,500,285/00-01, 13/01-02 for the Assessment year 92-93,93-94, 98-99 and 99-2000 respectively.

against the order of the Joint Commissioner of Income-Tax, Special Range II(i/c) Madurai and Joint Commissioner of Income-Tax, Special Range II, Madurai dated 30.03.2001, 29.11.2000 and 18.01.2001 and made in PA No. 49-000-CQ-0057 and 49-001-CQ-0057 for the Assessment year 1992-1993, 1993-1994, 1998-1999 and 1999-2000 respectively.

For Appellant in both appeals : Mr.B.Kumar,
Senior Counsel
for Mr.R.Loganathan

For Respondent in both appeals : Mrs.V.Pushpa
Junior Standing Counsel

COMMON JUDGMENT

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

Challenging the orders dated 07.08.2006 and 22.09.2006 passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, the appellant / assessee has come up with these tax case appeals.

2.By order dated 27.06.2012, this court admitted the appeals on the following substantial questions of law:

> "(i) Whether margin money deposited by the petitioner company, being essential to carry on the business, the interest earned on such deposit of margin money are entitled to deduction as part of income from the business and eligible for relief under Section 80 HHC?
>
> (ii) Whether the Tribunal is right in holding that the ratio in Chinnapandi's case reported in 282 ITR 369 CIT Vs. Chinnapandi is applicable to the facts of the instant case?"

3.When the matters were taken up for consideration, the learned counsel appearing for both sides in unison, submitted that the issue involved herein is covered in favour of the assessee, as per the decision of the Hon'ble Supreme Court in the case of ACG Associated Capsules (P) Ltd v. CIT [(2012) 18 taxmann.com 137(SC)], the relevant portion of which is usefully extracted 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 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. For this interpretation of Explanation (baa) to Section 80HHC of the Act, we rely on the judgment of the Constitution Bench of this Court in Distributors (Baroda) P. Ltd. v. Union of India and Others (supra). Section 80M of the Act provided for deduction in respect of certain intercorporate dividends and it provided in sub-section(1) of Section 80M that "where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, 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 from such income by way of dividends an amount equal to" a certain percentage of the income mentioned in this Section. The Constitution Bench held that the Court must construe Section 80M on its own language and arrive at its true interpretation according to the plain natural meaning of the words used by the legislature and so construed the words "such income by way of dividends" in sub-section (1) of Section 80M must be referable not only to the category of income included in the gross total income but also to the quantum of the income so included. 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.

12.If we now apply Explanation (baa) as interpreted by us in this judgment to the facts of the case before us, if the rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax under Section 28 of the Act, and if any quantum of the rent or interest of the assessee is allowable as an expense in accordance with Sections 30 to 44D of the Act and is not to be included in the profits of the business of the assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt of rent or interest will not be deducted under clause (1) of Explanation (baa) to Section 80HHC. In other words, ninety per cent of not the gross rent or gross interest but only the net interest or net rent, which has been included in the profits of business of the assessee as computed under the head "Profits and Gains of Business or Profession", is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business.

13. The view that we have taken of Explanation (baa) to Section 80HHC is also the view of the Delhi High Court in Commissioner of Income-Tax v. Shri Ram Honda Power Equip (supra) and the Tribunal in the present case has followed the judgment of the Delhi High Court. On appeal being filed by the Revenue against the order of the Tribunal, the High Court has set aside the order of the Tribunal and directed the Assessing Officer to dispose of the issue in accordance with the judgment of the Bombay High Court in Commissioner of Income-Tax v. Asian Star Co. Ltd. (supra). We must, thus, examine whether reasons given by the High Court in its judgment in Commissioner of Income-Tax v. Asian Star Co. Ltd. (supra) were correct in law.

14. On a perusal of the judgment of the High Court in 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 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 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.

16. In the result, we allow the appeal and set aside the impugned order of the High Court and remand the matter to the Assessing Officer to work out the deductions from rent and interest in accordance with this judgment. No costs."

4.In the light of the aforesaid decision, which is squarely applicable to the facts of the present case, these appeals are allowed by setting aside the orders impugned herein. Consequently, the matter is remanded to the Assessing Officer to work out the deductions from rent and interest in accordance with the aforesaid decision. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gba/msr
To
1.The Asst. Commissioner of Income Tax, Circle I,
  Virudhunagar.

2.The Income Tax Appellate Tribunal
  Madras C Bench.

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

4. The Deputy Commissioner of Income-Tax
   Circle I, Virudhunagar

5. The Joint Commissioner of Income-Tax
   Special Range II(i/c) Madurai.

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SV(CO)
SP(09/05/2022)