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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

AND

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.184 OF 2012

M/s.Fenner (India) Limited,  
No.3, Madurai Melakkal Road,  
Kochadai,  
Madurai - 625 016.

...Appellant

Versus

The Assistant Commissioner of Income Tax,  
Circle I,  
Madurai.

...Respondent

Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "B" Bench, Chennai dated 31.03.2009 in I.T.A.No.1588/Mds/2007.

As against appellate Orders and Grounds of Decision. Order dated 15.03.2007 made in ITA.No.0290/06-07 by the Commissioner of Income Tax (Appeals)-I, Madurai and

As against Assessment order dated 20.12.2006 made in PAN.No.AAACF2348D by the Assistant Commissioner of Income Tax Circle-I, Madurai for the Assessment Year 2004-2005.

For Appellant : Mr.R.Vijayaraghava for  
Mr.Subbaraya Aiyar

For Respondent : Mr.M.Swaminathan,  
Senior Standing Counsel  
and Mrs.V.Pushpa,  
Junior Standing Counsel



## JUDGMENT

R. MAHADEVAN, J.

This is an appeal filed by the assessee against the order of the Income Tax Appellate Tribunal dated 31.03.2009 in I.T.A.No.1588/Mds/2007.

2.The appellant is engaged in the business of manufacture and sale of V & Fan Belts, Oil Seals etc. For the assessment year 2004-2005, they filed its return on 01.11.2004 admitting a total income of Rs.14,02,65,870/-, which was subsequently, revised by them on 20.09.2005, admitting the income at Rs.13,93,08,090/-. Upon scrutiny of the same, the respondent issued notice under section 143(2) of the Income Tax Act, 1961 (in short, "the Act") and thereafter, completed the assessment under section 143(3) on 20.12.2006 determining the total income at Rs.14,67,27,610/- which excludes long term capital gains. While doing so, the assessing officer among others, restricted the claim of deduction under section 80HHC by excluding 90% of the royalty receipts from the profits of the business under clause (baa) to explanation to section 80HHC(4). Challenging the order of assessment passed by the assessing officer, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Madurai, who, by order dated 15.03.2007, partly allowed the appeal filed by the appellant. Aggrieved over the same, the Revenue went on appeal before the ITAT. By order dated 31.03.2009, the Tribunal set aside the order of the CIT(A) and directed the assessing officer to exclude the receipt of royalty from business profits for the purpose of deduction under section 80HHC of the Act. Therefore, the appellant is before this court with this tax case appeal.

3.The learned counsel for the appellant contended that the appellant entered into a MOU with its 100% subsidiary company; the subsidiary company manufactures the goods as per the specifications given by the appellant and the appellant has also provided know-how, secret formula manufacturing process and methods to ensure the same quality of manufactured goods; for providing these services, the subsidiary company paid royalty and hence, the royalty receipts are directly related to the goods exported by the appellant and the same cannot be excluded from the profits of the business. Without considering the said aspect in a proper perspective, the assessing officer excluded 90% of the royalty receipts from the profits of the business. Though the CIT(A) rightly set aside the order of assessment, the Tribunal erred in directing the assessing officer to exclude the receipt of royalty from business profits for the purpose of deduction under section 80HHC of the Act. Therefore, the learned counsel sought to allow this appeal by setting aside the



order of the Tribunal.

4. Repudiating the claim so made on the side of the appellant, the learned senior standing counsel appearing for the respondent submitted that the appellant/assessee cannot improve their case, when the issue involved herein is covered by a decision of this Court in Commissioner of Income Tax v. Shiva Distilleries Ltd., [(2007) 293 ITR 108], wherein, it was categorically held that "guarantee commission as well as royalty viz., a payment for using a right, have to be excluded from the business profit for the purpose of calculation of deduction under section 80HHC of the Act". Thus, according to the learned counsel, there cannot be any reason for deviating such a view, which has already attained finality.

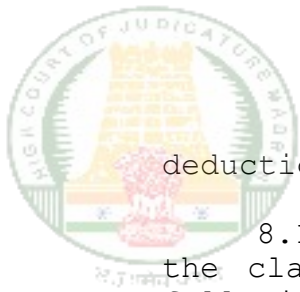
5. Heard both sides and perused the materials available on record.

6. By order dated 20.06.2012, this Tax Case Appeal was admitted on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the royalty income received for providing know-how, secret formula manufacturing process and methods in respect of goods manufactured by the subsidiary and exported by the assessee is not eligible for deduction under Section 80HHC of the Income Tax Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the royalty receipts should be excluded from the profits of the business for the purpose of computation of deduction under Section 80HHC of the Income Tax Act?"

7. Before the assessing officer, the appellant claimed that the sale of raw materials, processed waste and scrap, sale of spares, etc. form part of business activities and hence, it should be included in the total turnover. Further, the royalty received by them for the services provided to the subsidiary company, is related to export activity and therefore, the same cannot be taken into account for 90% exclusion from the business profits, while computing deduction under section 80HHC. However, the assessing officer rejected the claim of the appellant, after having held that royalty income claimed by them is not arising out of any business activity related to export and it is incidental in nature and hence, 90% of the royalty income was reduced from the profit of the business for computation of



deduction under section 80HHC.

8. In the appeal filed by the appellant, the CIT(A) allowed the claim of the appellant, relating to royalty income, after following the earlier order of the Tribunal dated 31.07.2006 in ITA.No.2669/Mds/04 in respect of the appellant's own case for the assessment year 2000-01. However, the Tribunal set aside the same and directed the assessing officer to exclude the receipt of royalty from business profits for the purpose of deduction under section 80HHC of the Act, based on the decision of this court in CIT v. Shiva Distilleries Ltd [(2007) 293 ITR 108 (Madras)].

9. In the aforesaid decision in Shiva Distilleries Ltd, this court had referred to the earlier order in CIT v. Madras Motors Ltd / M.M.Forgings Ltd [(2002) 257 ITR 60], in which, it was held that "the turnover from the business of sale of motorcycles, motorcycle spare parts and television sets could not be included in the total turnover of the assessee for the purpose of the computation of deduction under section 80HHC of the Act as the total turnover in section 80HHC is only the turnover relating to export business of the assessee and not the turnover relating to other business of the assessee". In the light of the said order, this court held that the scrap and waste materials, which would not be relatable to export business of the assessee, have to be excluded from business profit for the purpose of calculation of deduction under section 80HHC of the Act.

10. Further, in the same decision in Shiva Distilleries Ltd case, with regard to includibility of royalty as well as the guarantee commission for the purpose of calculation of deduction under section 80HHC of the Act, this court had referred to two decisions (i) CIT v. Bangalore Clothing Co. [(2003) 260 ITR 371], wherein, it was held by the Bombay High Court that "the Explanation (baa) to section 80HHC of the Income Tax Act, 1961, was inserted by the Finance (No.2) Act, 1991, with effect from April 1, 1992 and under that Explanation, "profits of the business", for the purposes of section 80HHC does not include receipts which do not have an element of turnover like rent, commission, interest etc"; and (ii) CIT v. Sundaram Clayton Ltd [(2006) 281 ITR 425], in which, it was held by this court that "the charges of miscellaneous income and commission do not form part of the turnover for the purpose of calculation of deduction under section 80HHC of the Act". Following the said two decisions, it was categorically held that "guarantee commission as well as royalty viz., a payment for using a right, have to be excluded from the business profit for the purpose of calculation of deduction under section 80HHC of the Act".



11. Applying the ratio laid down in the aforesaid decision viz., Shiva Distilleries Ltd's case, which is squarely applicable to the facts of the present case, wherein, there is no concrete material produced by the appellant / assessee to prove that the royalty income received from the subsidiary company, are related to export business, this court is of the view that the Tribunal has rightly directed the assessing officer to exclude the royalty income from the business profits for the purpose of calculation of deduction under section 80HHC of the Act, which warrants no interference.

12. In such view of the matter, the substantial questions of law raised herein are answered against the appellant. Accordingly, the tax case appeal stands dismissed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Assistant Commissioner of Income Tax,  
Circle I, Madurai.
2. The Commissioner of Income Tax (Appeals)-I  
Madurai.
3. The Income Tax Appellate Tribunal,  
'B' Bench, Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.33344

T.C.A.No.184 of 2012

KV(CO)  
PM/04/07/2022