

2024:PHHC:102116-DB



ITA-597-2008 (O&M)
Date of Decision: 08.08.2024

M/S VARDHAMAN TEXTILES LTD.
Vs.
CIT AND ANOTHER

...Appellant

...Respondents

2024:PHHC:102119-DB



ITA-556-2008 (O&M)
Date of Decision: 08.08.2024.

M/S VARDHMAN POLYTEX LTD.
V/S
C I T AND ANR.

...Appellant

...Respondents

2024:PHHC:102120-DB



ITA-557-2008 (O&M)
Date of Decision: 08.08.2024.

M/S VARDHMAN POLYTEX LTD.
V/S
C I T AND ANR.

...Appellant

...Respondents

2024:PHHC:102121-DB



ITA-558-2008 (O&M)
Date of Decision: 08.08.2024.

M/S VARDHMAN PLOYTEX LTD.
V/S
C I T AND ANR.

...Appellant

...Respondents

ITA-597-2008 (O&M) and connected cases.

2024:PHHC:102122-DB



ITA-559-2008 (O&M)
Date of Decision: 08.08.2024.

M/S VARDHMAN PLOYTEX LTD. ...Appellant
V/S
C I T AND ANR. ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate,
Mr. Siddhant Suri, Advocate and
Ms. Parnika Singla, Advocate in ITA-597-2008.

None for the appellant(s) in ITA-556-2008, ITA-557-2008, ITA-558-2008 and ITA-559-2008.

Mr. Ranvijay Singh, Sr. Standing Counsel for the revenue.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The following question of law was framed at the time of admission of ITA-597-2008, on 28.11.2008:-

“Whether the appellant – assessee is entitled to claim exemption as per Section 10B of the Act in respect of manufacturing unit name M/s Arihant Spinning Mills which was got converted into 100% EOU from a DTA unit during the assessment year 1995-96 and also in view of Circular No.1 of 2005, dated 06.01.2005?

2. Learned senior counsel submits that during the pendency of the appeal, the aforesaid question of law has been rendered infructuous and the same is, therefore, not pressed. However, she submits that vide CM-4632-

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CII-2009, she had prayed for amended questions of law to be considered for the purpose of disposal of the instant appeal.

3. We have considered the said application and the same is accordingly allowed. The following questions of law as amended questions of law are taken on record and the same read as under:-

“A. Whether the action on the part of the respondent authorities to wrongly exclude the 90% interest received from customers for the eligible profits of business while calculating deduction under Section 80HHC of the Income Tax Act, is legally sustainable in the eyes of law ?

B. Whether the action on the part of the respondent authorities to wrongly exclude the export turnover and total turnover of 100% EOU for the eligible export turnover and total turnover of the company while calculating deduction under Section 80 HHC of the Income Tax Act, is legally sustainable in the eyes of law ?

4. Considering that the appellant does not press the question of law framed by this Court on 28.11.2008, the said question of law is held to be not pressed.

5. With regard to amended questions of law i.e. ‘A’ and ‘B’, learned senior counsel submits that the question of law as to whether part of the respondents in excluding 90% interest received from customers for eligible profits of business of business while calculating deduction under Section 80 HHC of the Act, 1961, stands finally adjudicated by the in [2019] 103 Taxmann.com 249 (Guj.), titled as Principal Commissioner of Income Tax vs. Atul Ltd.. The Gujarat High Court relied upon its earlier Division

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Bench judgment in case of Nirma Industries Ltd. vs. Dy. CIT [2006] 283 ITR 402 (Gujarat). The same was again followed by the Gujarat High Court in CIT vs. Nirma Ltd. [2014] 367 ITR 12. The view taken by the Gujarat High Court has been upheld by the Hon'ble Supreme Court.

6. Learned counsel for the revenue does not controvert with regard to the said judgments having been passed by the Gujarat High Court but submits that this Court should independently examine the matter.

7. We have considered the submissions.

8. For the purpose of adjudication of the present appeal, it would be apposite to quote the concerned paras of Atul Ltd. (supra) as under:-

“4. Heard the learned Counsel appearing on behalf of the revenue at length. As observed hereinabove, the question, which is posed for the consideration of this Court is, whether the interest charged /earned by the assessee from its purchasers for the period of 90 days on the delayed payment of sale consideration can be said to be income from other sources and/or it can be said to have nexus with its business activities for which the assessee is allowable the deduction under Section 80HHC of the Income Tax Act. As such, identical question came to be considered by the Division Bench of this Court in the case of Nirma Industries Ltd. v. Dy. CIT [2006]-283-ITR 402 (Guj.). In the case before the Division Bench the question was with respect to interest received on late payment of sale consideration and the question was whether the said amount can be said to be arrived from business or not. It is specifically

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observed and held by the Division Bench of this Court that such amount of interest received on late payment of sale consideration can be said to have been derived from business and the same is included in profits for the purpose of Section 80-1 of the Income-tax Act, 1961. The said decision has been subsequently followed by the Division Bench of this Court in the case of CIT v. Nirma Ltd. [2014] 367 ITR 12, the decision which has been relied upon by the learned tribunal while passing the impugned judgment and order. The submissions on behalf of the revenue that as in the present case as the special provision has been made by the assessee with respect to the interest charged /earned for a period of 90 days from the purchaser on delayed payment of sale consideration, and therefore, the same cannot be stated to have any nexus with the business is concerned, it is required to be noted that merely because some special provision is made by the assessee, it cannot be said that interest earned on late payment of sale consideration would be the amount derived from business.

4.1. Now so far the reliance placed upon the decision of the Hon'ble Supreme Court in the case Ravindranathan Nair (supra) is concerned on considering the facts of the case before of the Hon'ble Supreme Court, we are of the opinion that the said decision would not be applicable to the facts of the case on hand. In the case before the Hon'ble Supreme Court the assessee claimed the deduction with respect to the charges paid for

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purchasing material of the purchasers. To that it was held that the same cannot be permitted to be deducted and the same cannot be said to be as income earned by the business. As observed hereinabove, the issue is directly covered by the decision of the Division Bench of this Court in the case of Nirma Industries (supra). We are in complete agreement with the view that the interest earned/charged by the assessee on the delayed payment of sale consideration (for 90 days) is not required to be excluded for the purpose of computation of deduction under Section 80HHC of the Act. No substantial question of law arises in the present Tax Appeal. Hence, the present Appeal deserves to be dismissed.”

9. The question regarding exclusion of 90% interest received from customers for being included as eligible profits of business and thereby requires to be excluded for the computation of deduction under Section 80HHC of the Act, 1961, stands concluded in the aforesaid judgment.

10. We are agree with the view already taken by the Gujarat High Court and decide the aforesaid question of law accordingly in favour of the assessee.

11. We notice that the Gujarat High Court also considered the judgment passed by the Hon’ble Supreme Court in CIT vs. K. Ravindranathan Nair (2007) 295 ITR 228/165 Taxman 285 and found that the same has been passed on its own facts and would not be applicable to the facts of the case on hand.

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12. As regards amended question of law 'B' is concerned, we find that the same has already been examined by this Court in ITA-408-2007, decided on 02.09.2016, titled as M/s Mahavir Spinning Mills Ltd. vs. Commissioner of Income Tax, Ludhiana and another.

13. The Coordinate Bench considered the following questions of law which are akin to the amended questions of law as framed in the present case:-

i. Whether on a true and correct interpretation of Section 80HHC of the Income Tax Act, 1961, the Tribunal has erred in law in holding that the export turnover of the unit whose profits are exempt under section 10B of the Income Tax Act, 1961 is not to be included in the 'export turnover' for the purposes of calculating the deduction under section 80HHC of the Income Tax Act, 1961?

ii) Whether the Tribunal was right in law in not considering, dealing with the decision of a co-ordinate Bench on the issue which admittedly applied and had attained finality?

14. In M/s Mahavir Spinning Mills Ltd. (supra), this Court held as under:-

10. Section 80HHC was not included. What is important to note is that the legislature expressly provided that an assessee who derives the benefit under section 10A would be precluded from deriving the benefits under certain sections alone. As we noticed earlier a similar provision was there in section 10B(4)(iii).

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11. The nature and the extent of the benefits under section 80HHC and 10B are also entirely different. As we mentioned earlier a circular dated 16.12.1988 provided that section 10B was introduced to confer an additional benefit upon an assessee.

12. Our view is supported by a judgment of the Division Bench of Delhi High Court dated 17.10.2008 in ITR No. 10 of 2000 Commissioner of Income Tax, Delhi (Central) v. M/s Dabur India Ltd. That was a reference pertaining to the assessment year 1989-90 in respect of a case under section 10A of the Act. The assessee had claimed deduction under section 80HHC and while doing so included the export turnover of its unit in the Export Promotion Zone (EPZ). The Tribunal accepted the assessee's contention that for the purpose of computation of profits derived from the export turnover, it was the total export turnover which had to be considered for arriving at the amount of export turnover as well as the amount of total turnover. It was contended on behalf of the revenue that once the income from the unit in EPZ was included from scope and ambit of total income, it could not be reintroduced for the sake of making a deduction under section 80HHC as profits and gains of the business. Delhi High Court held as under:-

“10. Having considered the arguments advanced by the counsel for the parties, while we agree with what the learned counsel for the revenue states that the provisions of Section 10(A)(4)(iii) would not be applicable for the

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present assessment year, i.e., 1989-90, we would still not be in a position to agree with his submissions that the export turnover of the unit in the free trade zone is to be excluded for the purposes of computing deduction under Section 80HHC. The deduction under Section 80HHC is to be computed as per the formula specified in Section 80HHC(3) which speaks of three components. The three components being the export turnover in respect of the goods in question, the total turnover of the business carried on by the assessee and the profits of the business. None of these components has reference to the expression total income. The deduction has to be computed on the basis of these components. A literal reading of the provisions and literal application of the formula does not enable us to exclude the export turnover of the unit in the EPZ from the export turnover of such goods nor from the total turnover of the business. The profit arising out of these units in the EPZ is also not excludable from the profits of the business. We may note that Section 80HHC is a beneficial provision for the purposes of encouraging exports. Although in this case, there is no doubt with regard to the interpretation or the manner in which the deduction under Section 80HHC is to be computed, even if there were any such doubts, the provision would have to be interpreted to fulfill the objective of giving a benefit to

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the assessee who indulges in exports. Looked at in any manner, we are of the opinion that the export turnover from the unit in the EPZ is not to be excluded while computing the deduction under Section 80HHC. The deduction that is to be computed is without reference to the total income. Once the deduction is computed in terms of the formula prescribed in Section 80HHC(3), the amount so arrived at is to be deducted from the total income. However, while computing the deduction, reference to total income' is not called for.?

13. We are in respectful agreement with the judgment. For the point under consideration the provisions of Section 10A and 10B are similar. The judgment though under section 10A applies to the present case under section 10B.

15. Similar view was taken by the Madras High Court in Commissioner of Income Tax v. Ambatture Clothing Ltd. [2010] 194 Taxman 79 (Madras) as well as a Division Bench of Bombay High Court dated 01.04.2014 in Income Tax Appeal No. 5794 of 2010, titled as Commissioner of Income Tax v. M/s Hindustan Lever Ltd.

16. In view of the above, we have no reason to differ from the view already taken by this Court earlier and the amended question of law No.B is answered in favour of the assessee. The appeal accordingly stands allowed as above. The order passed by the ITAT as well as CIT(A) is quashed and set aside to the aforesaid extent. The appellant would be entitled to the aforesaid benefit as deduction under Section 80HHC of the Act, 1961.

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17. The question of law framed by this Court at the time of admission of these appeals on 25.11.2008, stands finally adjudicated by this Court in ITA-408-2007, decided on 02.09.2016, titled as M/s Mahavir Spinning Mills Ltd. vs. Commissioner of Income Tax, Ludhiana and another and answered the same in favour of the assessee.

18. We accordingly allow these appeals in the aforesaid directions.

19. All pending misc. application(s) also stand disposed of.

20. A copy of this order be placed on the files of connected cases.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

08.08.2024
rajesh

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No