

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "B" MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM
श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

ITA NO.7547/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s Balaji Export Co., Office No.307, Sharaf Mansion, 92, Princess Street, Old Hanuman Lane, Mumbai-400002	<u>बनाम/</u> Vs.	Asstt. Commissioner of Income Tax-15(1), Mumbai.
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AAFFB4205M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA NO.6691/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Dy.Commissioner of Income Tax -15(1), Room No.104, Matru Mandir, 1 st floor, Tardeo Road, Mumbai-400007	<u>बनाम/</u> Vs.	M/s Balaji Export Co., Office No.307, Sharaf Mansion, 92, Princess Street, Old Hanuman Lane, Mumbai-400002
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by	:	Shri Vimal Punmiya
प्रत्यर्थी की ओर से/Revenue by	:	Shri Suman Kumar
सुनवाई की तारीख /Date of Hearing	:	23.8.2017
घोषणा की तारीख /Date of Pronouncement	:	6.9.2017

आदेश / ORDER**PER RAJESH KUMAR, A. M.:**

The captioned are cross-appeals by the assessee and revenue pertaining to assessment year 2010-11. The appeals are directed against the order of Id.CIT(A)-26, Mumbai, dated 28.08.2014 which in turn has arisen from an order passed by the Assessing Officer dated 28.3.2013 under section 143(3) of the Income Tax Act, 1961(in short 'the Act).

ITA NO.6691/Mum/2014

2. Grounds of appeal taken by the revenue in this appeal are as under :

"On the facts and in the circumstances of the case, the Id.CIT(A) has erred in directing the AO to reduce the net interest income while determining the profits derived from export and tax the same as "income from other sources", but ignoring the facts that in the AY-2007-08, the AO has treated the entire interest income on FDR as a "income from other sources" and same has been upheld by yourself".

ITA NO.7547/Mum/2014

3. Grounds of appeal taken by the assessee in this appeal are as under:

"1.0 On the facts and circumstances of the case, the Id.CIT(A) erred in upholding the order of the AO in interpreting that the interest income on FDR's is to be excluded for the purpose of computing the exemption u/s 10A(1A) of the Act;

1.1 On the facts and circumstances of the case, the Id.CIT(A) erred in making the disallowance of exemption u/s 10A(1A) of Rs.1,05,04,361/- in respect of interest on bank deposits for obtaining

the bank guarantees, L C and credit facilities having nexus to the business”.

From the above grounds in the appeal of revenue as well as assessee the issue is whether the assessee is eligible for deduction u/s 80IA of the Act on interest income earned on the deposits placed with the bank/securities/margin money.

4. Brief facts relating to the above issue are that the assessee received interest on bank deposits/FDRs amounting to Rs.1,05,04,361/- and the AO during the course of assessment proceedings disallowed the claim of deduction as claimed by the assessee u/s 10A of the Act by treating this interest income as income from other sources. Aggrieved, assessee preferred appeal before the Id.CIT(A) who restricted the disallowance of claim of deduction u/s 10A on this interest income only qua the net interest, which he worked out to Rs.30,17,944/- as against the total disallowance by the AO of Rs.1,05,04,361/-. While disposing the appeal of the assessee the Id.CIT(A) has held as under :

"6.1 I have carefully considered facts of the case, documents produced before me and submissions filed by Ld. AR. The contention of Ld. AR that the interest on bank deposits kept as security for obtaining the gold from the Government agencies is derived from exports cannot be accepted for the reason that such interest income is not having a first degree nexus to the exports.

"The Hon'ble Apex Court in the case of Liberty India vis. CIT reported in 317 ITR 218 has held that "It is evident that s. 80B provides for allowing for deduction in respect of profits and gains derived from the eligible business. The words "derived from" are narrower in connotation as compared to the words "attributable to". In the words, by using the expression "derived from", Parliament intended to cover sources not beyond first degree. On analysis of ss.80IA, and 80IB it becomes clear that any industrial undertaking, which is eligible on satisfying sub-so (2), would be entitled to deduction under sub S. (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, sub S. (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking. "

The Judicial decisions relied by Ld. AR in the cases of CIT vs. Punit Commercial Ltd [116 Taxmann 191 (Born)], JP Morgan Services India Pvt Ltd vs. DCIT [33, SOT 327(Mum)] and CIT vs. Meghalaya Steels Ltd [356 ITR 235 (Gau-HC)] are no more relevant in view of the decision of Hon'ble Apex Court in case of Liberty India (supra) and also in the case of Pandian Chemicals Ltd v/s. CIT [262 ITR 278 (SC). Accordingly, I reject the arguments of Ld. AR to allow the entire interest received on the deposits kept with banks as derived from exports. The AD has rightly assessed' the' interest Income 'of the appellant under head "Income from other sources.

6.4 The next argument of Ld. AR is whether the gross interest or net interest is to be reduced while computing the exemption u/s 10A(IA) of LT. Act. The Ld AR contended that only net interest, i.e interest income after reducing interest paid, could utmost be excluded while determining the business income derived from exports. The Hon'ble Apex Court in the case of ACG Associated Capsules (P) Ltd vs. CIT reported in 247 CTR 372, decided that only the net interest and not the gross interest is required to be deducted while determining the profits of the export business for the purpose of Section 80HHC. In the case of Vishal Tools Industries vs. CIT [81 C~H 97], Hon'ble Punjab & Haryana High Court decided that the netting of interest for

the purpose of calculation of deduction u/s.80HHC was required to be done. In the case of Voltas International Ltd vs. ACIT [2 ITR 410 (Mum-ITAT)] Hon'ble Mum ITAT decided that only the net interest income is to be excluded while computing the deduction u/s.80IB of the Act. In the case of Suzlon Energy Ltd vs, DCIT (507 SOT 53), Hon'ble Ahmedabad Bench of ITAT has decided that only the net interest is to be excluded from the profits of business while computing the deduction u/s.801B of the Act.

6.5 In view of Supreme Court decision in the case of ACG Associated Capsules (P) Ltd (supra), it is settled law that .while computing the profits derived from exports for purpose of Sec 80HHC, only the net interest and not gross interest is to be excluded from profits of the eligible business. The wordings "profit derived from exports" prescribed u/s 80HHC are same as in section 10(IA) of IT Act.

6.6 On perusal of schedule-9 of appellant's audited balance sheet, it is observe: that appellant had reduced the interest income of Rs.1,05,04,361/- from finance cost of Rs.1,3.2,18,545/- and disclosed the net interest paid of Rs.27,14,184/- However, as submitted if bank charges and L.C. charges are excluded from finance cost, then net interest income works to Rs.30,17,944/-. I therefore direct the AO to reduce the net interest income [Interest paid - Interest received] while determining the profits derived from exports while computing the exemption u/s.10A(IA) of 1.1 Act and such net interest i-shall be taxable under the head "Income' from other sources. However, the AO shall verify the net interest income received/earned before giving effect to this order. Accordingly, ground no.4 to 4.2 are partly allowed."

Aggrieved against the order of the Id.CIT(A) both, the assessee as well as revenue came in appeal before the Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. The assessee claimed before us that it has been received interest on bank FDRs kept as security to obtain loan from

Government Agencies. These bank FDRs have direct nexus to the assessee's jewellery business (Export) because there are kept as security to obtain Gold from Government Agencies and as such deposits had been kept for obtaining the Gold from MMTC/RBI. It was claimed by the assessee that as per EXIM Scheme the supplier before importing of gold is required to provide bank guarantee/LC for which the bank FDRs are kept as security. Alternatively, the assessee also claimed that only net interest ought to have excluded while determining the claim of deduction u/s 10A of the Act on the profit derived from exports. It was claimed by the assessee before us that it has recovered the interest on bank deposit of Rs.1,05,04,361/- and has also paid interest of Rs.74,86,417/- resulting into net interest income of Rs.30,17,944/-. The assessee has also filed a comparative chart of interest income viz-a-viz the interest expenses. After hearing both the sides and going through the facts, we are of the view that the alternative plea of the assessee is quite reasonable that only net interest should be disallowed in the claim of deduction u/s 10A of the Act for the reasons that the assessee has actually earned net interest on which deduction is claimed by the assessee because it has already paid interest expenses. Accordingly, we find no infirmity in the order of Id.CIT(A) and hence the same is affirmed. Both the appeals are dismissed.

6. In the result, the appeals filed by rival parties are dismissed.

Order pronounced in the open court on 6th Sept, 2017.

Sd

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(महाविर सिंग/Mahavir Singh)
न्यायिक सदस्य / Judicial Member

(राजेश कुमार/Rajesh Kumar)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :6th Sept.2017
SRL,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai