IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

INCOME TAX APPEAL NO. 24 OF 2015

Conventional Fastners …….Appellant

Versus

Commissioner of Income Tax, Dehradun ……..Respondent

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INCOME TAX APPEAL NO. 21 OF 2017

Conventional Fastners …….Appellant

Versus

Commissioner of Income Tax, Dehradun ……..Respondent

Mr. (Dr.) Kartikey Hari Gupta, Advocate for the appellant.
Mr. H.M. Bhatia, Advocate for the respondent.

Dated: 15.11.2017

Coram: Hon'ble K.M. Joseph, C.J.
Hon'ble V.K. Bist, J.

K.M. Joseph, C.J. (Oral)

There is delay of 68 days in filing ITA No. 21 of 2017. In the circumstances, after hearing the learned counsel for the parties, the Application (CLMA No. 11172 of 2017) for condonation of delay will stand allowed and the delay will stand condoned.

2. Appeals being connected, we are disposing of the same by a common judgment. These Appeals are maintained under Section 260A of the Income Tax Act, 1961 (**hereinafter referred to as the Act**).

3. ITA No. 24 of 2015 is directed against the judgment of the Tribunal, and the order came to be passed in respect of assessment year 2009-10. The assessee is an undertaking, which manufactures electric meters. It claimed the benefit of Section 80-IC of the Act. The Assessing Officer noted that the assessee had earned a net profit of Rs. 54,31,995/- and the entire amount was allowed as deduction

under Section 80-IC of the Act. The Commissioner of Income Tax initiated proceedings under Section 263 of the Act. After show cause and opportunity to the appellant, the order came to be interfered with on the following reasoning:

It was found that the assessee earned an amount of Rs. 22,29,129/- from bank interest apparently out of Rs. 54,31,995. Though claimed as the business income by appellant, the same was actually earned by the appellant by way of interest on fixed deposits, which the appellant had to maintain for the purposes of the Bank issuing a Bank Guarantee for carrying on the business, according to the appellant, to provide for the performance guarantee. The Commissioner took the view, after noting the judgments of the Hon'ble Apex Court in the cases of **Cambay Electrical Supply Co. Ltd. vs. Commissioner of Income Tax, Gujarat II** reported in **1978 (113) ITR 84** and **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)** that there is a distinction between the words "derived from" and "attributable to". Insofar as Section 80-IC is concerned, the words used are not "attributable to", but "derived from". On the same, the Commissioner distinguished the decisions relied on by the appellant and proceeded to take the view that the Assessing Officer was incorrect in including the same for the purpose of computing deduction under Section 80-IC of the Act. Hence, the assessment was cancelled under Section 263 of the Act and it was to be done afresh after taking all aspects discussed into the consideration. Against the same, the appellant preferred an Appeal before the Tribunal, which, by the order, which is impugned in ITA No. 24 of 2015, dismissed the Appeal of the assessee.

4. ITA No. 21 of 2017 arises as a sequel to the earlier proceeding. As just noted the matter had been remitted back by the Commissioner under Section 263 of the Act. Following the said order, a fresh assessment order was passed, in which the interest portion was not deducted. It was added to the income and no doubt, shown as an income from business. The Appeal filed against the same was

unsuccessful. Equally unsuccessful was the Appeal filed before the Tribunal as the Tribunal found that the Assessing Authorities were only following the direction given in the earlier round. It is this order, which is the subject matter of ITA No. 21 of 2017.

5. We heard Mr. (Dr.) Kartikey Hari Gupta, learned counsel for the appellant and Mr. H.M. Bhatia, learned counsel for the Revenue.

6. The Question of Law, which is pressed before us, is Question of Law No. A, which reads as under:

> "A. Whether the Ld. ITAT is correct in law in rejecting the appeal ignoring the fact that the amount earned from the FDR kept as security and as a business pre-requisite are deductible u/s 80 IC of the I.T. Act 1961."

7. Mr. Kartikey Hari Gupta, learned counsel for the appellant would, in fact, submit that the Tribunal has not considered the fact that as an integral part of the appellant's business, the appellant had to provide a performance guarantee. For the purpose of securing a performance guarantee, appellant had to provide security to the Bank. This security was furnished in the form of fixed deposit. It is on the fixed deposits that he earned interest. Therefore, he would submit that the earning of interest is a part of the business of the appellant. Therefore, it entitled the appellant to deduct the entire amount of interest under Section 80-IC. He would submit that the decisions of the Hon'ble Apex Court in **Cambay Electrical Supply Co. Ltd. vs. Commissioner of Income Tax, Gujarat II** reported in **1978 (113) ITR 84** and **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)** will not apply. They were rendered under Section 80HH. There is a distinguishing feature in Section 80-IC of the Act, which would render the decisions inapplicable. In this regard, he would point out the difference in language of Section 80HH and Section 80-IC. We may only extract sub-sections (1) of Section 80HH and 80-IC. They read as follows:

> "**80HH. Deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas.--**
>
> (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking, or the business of a hotel, to which this section applies, 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 profits and gains of an amount equal to twenty per cent thereof.
>
> **80-IC. Special provisions in respect of certain undertakings or enterprises in certain special States**.—
>
> (1) Where the gross total income of an assessee includes any profits and grains derived by an undertaking or an enterprise from any business referred to in sub-section (2), 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 profits and gains, as specified in sub-section (3)."

8. He would submit that in Section 80-IC, though no doubt the word used is "derived", there is also reference to the income derived by the enterprise. He would further submit that there is reference to income derived from any of the businesses mentioned in sub-section (2). Next, he drew our attention to the definition of the word "business" in Section 2(13) of the Act, which reads as under:

> "(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;"

9. He also sought to draw support from the following judgments:

> (1) Commissioner of Income Tax vs. Karnal Co-operative Sugar Mills Ltd. reported in (2000) 243 ITR 2 (SC).
>
> (2) Commissioner of Income Tax vs. Jaypee DSC Ventures Ltd. reported in (2011) 335 ITR 132.
>
> (3) Commissioner of Income Tax vs ELTEK SGS (P) Ltd. reported in (2008) 300 ITR 6 (Del).
>
> (4) Commissioner of Income Tax vs. Jagdish Prasad M. Joshi reported in (2009) 318 ITR 420 (Bom).

10. Per contra, Mr. H.M. Bhatia, learned counsel for the Revenue would draw our attention to the definition of the word "manufacture" in Section 2(29BA) of the Act, and he would submit that the interest, which is the subject matter of controversy in this case, has been earned by the supervention of a third party, namely, the Bank. It has nothing to do with the business activities of the appellant, which is actually a manufacturer of the product, which is contemplated under sub-section (2) of Section 80-IC. He would also reiterate that the matter is covered by the judgments of the **Cambay Electrical Supply Co. Ltd. vs. Commissioner of Income Tax, Gujarat II** reported in **1978 (113) ITR 84** and **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC).**

11. Firstly, we would refer to the judgment relied on by the appellant in the case of **Commissioner of Income Tax vs. Karnal Co-operative Sugar Mills Ltd.** reported in **(2000) 243 ITR 2 (SC)**. As it is a short judgment, we would think that it would be profitable to advert to the same as it is:

> "1. Leave granted.
>
> 2. In the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest has been earned. This is, therefore, not a case where any surplus share capital money which is lying idle has been deposited in the bank for the purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit is incidental to the acquisition of assets for the setting up of the plant and machinery. In this view of the matter the ratio laid down by this court in Tuticorin Alkali Chemicals and Fertilizers Limited v. CIT (1997) 227 ITR 172 (SC) will not be attracted. The more appropriate decision in the factual situation in the present case is in CIT v. Bokaro Steel Ltd (1999) 236

> ITR 315 (SC). The appeal is dismissed. There will be no order as to costs."

12. We may notice in this case at once that the issue did not arise under Section 80-IC. The issue was, whether the interest earned by the assessee in the said case on the money deposited to open a letter of credit for purchase of plants and machinery would be liable to be treated as capital receipt or whether it would be income. It was found that the deposit of money was directly linked with purchase of plants and, therefore, it was found that the income earned was incidental to acquisition of assets for setting up of the plant and machinery. Therefore, the question, which is deliberated at by the Hon'ble Apex Court, has absolutely nothing to do with the issue that arises in this case. In fact, in this case, the amount in question was credited to the Profit and Loss Accounts and it is actually treated as income by the appellant, and the Account of the appellant was accepted and the Assessing Officer gave deduction treating it as an income from his total income, and the issue, which arose from the order passed by the Commissioner was, whether the interest income could be deducted under Section 80-IC, as it was not derived from the business. Therefore, we would think that the appellant cannot rely on the said judgment.

13. As far as the judgment in the case of **Commissioner of Income Tax vs. Jaypee DSC Ventures Ltd**. reported in **(2011) 335 ITR 132** is concerned, it is necessary to notice the actual issue, which arose in the said case. The Question of Law, which was considered by the Delhi High Court, is as follows:

> "Whether in the facts and circumstances of the case the Tribunal was justified in deleting the addition of Rs.16,36,039/- on the ground that interest earned by the assessee on the fixed deposit receipt being capital in nature cannot be assessed as income from other sources solely on the foundation that the fixed deposit was made for submitting performance guarantee to the National Highways Authority of India?".

14. Thereafter, it was held as follows:

> 2. The facts giving rise to the present appeal are that the respondent - assessee filed its return of income for the assessment year 2003-04 on 21st September, 2003 declaring nil income. An order of assessment was framed under Section 143(3) on 29th March, 2006 determining the total income at Rs.16,38,039/-. The assessing officer treated the amount of interest income which had been set off against the project expenses as income from other sources and disallowed the same to be set off against the cost incurred on the project expenses. It is not in dispute that the assessee had furnished performance guarantee in favour of NHAI to get the contract awarded in its favour and to procure the said guarantee, it had kept the amount in a fixed deposit in the bank. The project was on BOT (Build-Operate-Transfer) basis where the promoters were required to bring in their own funds along with borrowed funds from bank/financial institutions for construction of the project. It is contended that the furnishing of bank guarantee had direct nexus with the carrying on of the project and, therefore, the said set off deserved to be allowed.
>
> 6. Being dissatisfied with the order passed by the first appellate authority, the assessee preferred an appeal before the tribunal and the tribunal took note of the rivalized submissions and came to opine that the assessee had received interest on the FDRs and the said interest had been reduced from the project expenditure which are subject to pending allocations; that the assessee had commenced the operation of the construction of the project; that furnishing of bank guarantee was the sine qua non for initiation of the project and only on furnishing the bank guarantee, could the assessee enter into the contract for construction of the project; that it is not a case where surplus funds have been utilized to earn the interest income; and that it was not the unutilized and surplus money which was deposited by the assessee to earn interest but on the contrary, the activity of depositing money was incidental to the business of the assessee as FDRs were required to be kept to enter into the agreement for commencement of the project and, hence, FDRs with the bank were made with the definite purpose and the interest earned by the assessee on the FDRs must go to reduce the pre-production expenses. The tribunal also opined that the interest earned by the assessee on the FDRs has intrinsic and inseggregable nexus with the work undertaken and, therefore, the interest earned by the assessee is capital in nature and shall go towards adjustment against the project

> expenditure and the same cannot be assessed as income from other sources. Being of this view, the tribunal allowed the appeal preferred by the assessee.
>
> 21. Keeping in view the aforesaid pronouncements in the field, the present controversy is to be adjudged. As is noticeable from the stipulations in the agreement, the performance guarantee by way of bank guarantee was required for faithful performance of its obligations. The non-submission of the guarantee would have entailed in termination of the agreement and NHAI would have been at liberty to appropriate bid security. That apart, the release of such performance security depended upon certain conditions. Thus, it is clearly evincible that the bank guarantee was furnished as a condition precedent to entering the contract and further it was to be kept alive to fulfill the obligations. Quite apart from the above, the release of the same was dependent on the satisfaction of certain conditions. Thus, the present case is not one where the assessee had made the deposit of surplus money lying idle with it in order to earn interest; on the contrary, the amount of interest was earned from fixed deposit, which was kept in the bank for furnishing the bank guarantee. It had an inextricable nexus with securing the contract. Therefore, we are disposed to think that the factual matrix is covered by the decisions rendered in Bokaro Steel Ltd. (supra), Karnal Co-operative Sugar Mills Ltd. (supra) and Koshika Telecom Ltd. (supra) and, accordingly, we hold that the view expressed by the tribunal cannot be found fault with."

15. No doubt, Mr. (Dr.). Kartikey Hari Gupta, learned counsel for the appellant would point out with reference to the contents of Paragraph No. 6 that as in the said case, in this case also, the fixed deposit had intrinsic and inseggregable nexus with the work undertaken. We notice that it was not a case of deduction of the income under Section 80-IC or even Section 80HH of the Act. On the other hand, the question was, whether the interest, which was earned, could be set off against the expenses, which were incurred. It is here that the Tribunal's findings came to be noted by the Hon'ble Apex Court, namely, that the interest was capital in nature and it would go against the project expenditure and the same could not be treated as income from other sources. We would, therefore, think that no support can be drawn by the appellant from the said decision.

16. The next decision, which we must advert to at the instance of the appellant, is the decision in the case of **Commissioner of Income Tax vs ELTEK SGS (P) Ltd**. reported in **(2008) 300 ITR 6 (Del)**. There, the Bench of the Delhi High Court was dealing with the claim of deduction by the assessee on the customs duty drawback under Section 80-IB. There, the Bench took the view that the amount, which is received by way of duty drawback is to be treated as reimbursement. Under the duty drawback scheme, the exporters were entitled to duty drawback on the duty paid on the raw materials used for the purpose of manufacture of goods, which were exported. They had the right to either use it themselves or sell it. The proceeds of the sale were sought to be deducted under Section 80-IB. It was there that the Court essentially took the view that there is a crucial difference between language of Sections 80HH, Section 80I and Section 80IB of the Act. We notice the following findings:

> "21. We are of the opinion that it is not necessary for us to go as far as the Gujarat High Court has done in coming to the conclusion that duty drawback is profit or gain derived from an industrial undertaking. It is sufficient if we stick to the language used in Section 80IB of the Act and come to the conclusion that duty drawback is profit or gain derived from the business of an industrial undertaking. The language used in Section 80IB of the Act is not as broad as the expression 'attributable to' referred to by the Supreme Court in Sterling Foods and Cambay Electric nor is it as narrow as the expression 'derived from'. The expression 'derived from the business of an industrial undertaking' is somewhere in between.
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> 22. Consequently, we are of the view that the source of the duty drawback is the business of the industrial undertaking which is to manufacture and export goods out of raw material that is imported and on which customs duty is paid. The entitlement for duty drawback arises from Section 75(1) of the Customs Act, 1962 read with the relevant notification issued by the Central Government in that regard.
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> 23. Learned Counsel for the Revenue also drew our attention to Pandian Chemicals Ltd. v. Commissioner of Income Tax . However, on a reading of the judgment we

> find that that also deals with Section 80HH of the Act and does not lay down any principle different from Sterling Foods. In fact, in Pandian Chemicals reliance has been placed on Cambay Electric Supply Industrial Co. Ltd. and the decision seems to suggest, as we have held above, that the expression 'derived from an industrial undertaking' is a step removed from 'the business of the industrial undertaking'."

17. Therefore, in fact, the Bench distinguished the Hon'ble Apex Court's ruling in the case of **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)**, which we will advert to, on the score that the language of Section 80HH differs from the language of Section 80-IB. In short, Section 80-IB permits deduction in respect of income from any business whereas under Section 80-IC, the income is to be derived from the business.

18. The next judgment is the judgment of the Bombay High Court in the case of **Commissioner of Income Tax vs. Jagdish Prasad M. Joshi** reported in **(2009) 318 ITR 420 (Bom)**. There also, the Court was concerned about deduction under Section 80-IA. There, the Court also noted the distinction between the language of the provisions, and relied on the judgment, which we have just cited, namely, that of the Delhi High Court in the case of **Commissioner of Income Tax vs ELTEK SGS (P) Ltd.** reported in **(2008) 300 ITR 6 (Del)**. We notice the following paragraph of the said judgment:

> "4. However, Mr. Murlidhar, learned counsel appearing on behalf of the respondent, strongly relied on the judgment of the Delhi High Court in the case of CIT vs. Eltek Sgs (P) Ltd. (2008) 215 CTR (Del) 279 : (2008) 3 DTR (Del) 241: (2008) 300 ITR 6 (Del) wherein the Delhi High Court has in fact considered the very same issue, and also the judgment relied upon by the Revenue and has clearly distinguished the language employed under ss. 80-IB and 80HH and has observed as under (pp. 9 and 10):
> "That apart, s. 80-IB of the Act does not use the expression 'profits and gains derived from an industrial

> undertaking' as used in s. 80HH of the Act but uses the expression 'profits and gains derived from any business referred to in sub-section'…
>
> A perusal of the above would show that there is a material difference between the language used in s. 80HH of the Act and s. 80-IB of the Act. While s. 80HH requires that the profits and gains should be derived from the industrial undertaking, s. 80-IB of the Act requires that the profits and gains should be derived from any business of the industrial undertaking. In other words, there need not necessarily be a direct nexus between the activity of an industrial undertaking and the profits and gains.
>
> Learned counsel for the Revenue also drew our attention to Pandian Chemicals Ltd. vs. CIT (2003) 183 CTR (SC) 99 : (2003) 262 ITR 278 (SC). However, on a reading of the judgment we find that that also deals with s. 80HH of the Act and does not lay down any principle difference from CIT vs. Sterling Foods (1999) 153 CTR (SC) 439 : (1999) 237 ITR 579 (SC). In fact, in Pandian Chemicals Ltd. (supra) reliance has been placed on Cambay Electric Supply Industrial Co. Ltd. vs. CIT 1978 CTR (SC) 50 : (1978) 113 ITR 84 (SC) and the decision seems to suggest, as we have held above, that the expression 'derived from an industrial undertaking' is a step removed from the business of the industrial undertaking."

19. Therefore, these decisions may not assist the appellant. The line of rulings starting from the case of **Cambay Electrical Supply Co. Ltd. vs. Commissioner of Income Tax, Gujarat II** reported in **1978 (113) ITR 84** and ending with the case of **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)** for the purpose of our narrative can be relied on. In the case of **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)**, we notice that the matter was under Section 80HH. Therein, the question arose in the following factual matrix:

The assessee had earned interest on deposits, which it had made with the Tamil Nadu Electricity Board. We have already noticed the language of Section 80HH. The Court proceeded to hold as follows:

> "4. Section 80HH of the Income-tax Act grants deduction in respect of profits and gains "derived from"

an industrial undertaking. The contention of the appellant before us is that interest earned on the deposit made with the Electricity Board for the supply of electricity to the appellant's industrial undertaking should be treated as income derived from the industrial undertaking within the meaning of Section 80HH. It is submitted that without the supply of electricity the industrial undertaking could not run and since electricity was an essential requirement of the industrial undertaking, the industrial undertaking could not survive without it. It is further pointed out that for the purpose of getting this essential input, the statutory requirement was that the deposit must be made as a pre-condition for the supply of electricity. Consequently, according to the appellant, the interest on the deposit should be treated as income derived from the industrial undertaking within the meaning of Section 80HH.

6. The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said (page 328) :

"The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition."

This definition was approved and reiterated in 1955 by a Constitution Bench of this court in the decision of Mrs. Bacha F. Guzdar v. CIT . It is clear, therefore, that the word "derived from" in Section 80HH of the Income-tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with Electricity Board cannot be said to flow directly from the industrial undertaking itself.

7. The learned counsel appearing on behalf of the appellant has referred to several decisions of the Madras High Court in order to contend that the word "derived from" could be construed to include situations, where the income arose from something having a close connection

> with the industrial undertaking itself. All the decisions cited by the appellant have been considered by the Madras High Court in the case of Pandian Chemicals Ltd. . We see no reason to disagree with the reasoning given by the High Court in Pandian Chemicals Ltd. 's case with respect to those decisions to hold that they do not in any way allow the word "derived" in Section 80HH to be construed in the manner contended by the appellant.
>
> 8. The learned counsel for the appellant then contended that having regard to the object with which Section 80HH was introduced in the statute book, this court should give a liberal interpretation to the words in a manner so as to allow such object to be fulfilled. The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant. In the circumstances of the case, we affirm the decision of the High Court and dismiss the appeal without any order as to costs."

20. We would think that the decision, which would apply in the facts of this case, is the decision in the case of **Pandian Chemicals Ltd. vs. Commissioner of Income Tax** reported in **(2003) 262 ITR 278 (SC)**, as the language, which is employed in Section 80HH is similar to the language used in Section 80-IC. Both in Sections 80HH and 80-IC, the Legislature has chosen to employ the word "derived" as distinguished from "attributable to". Had the Legislature used the words "attributable to", then it would have a much wider effect and it may have encompassed within itself, the income, which is the subject matter of controversy before us. But insofar as a narrow concept has been contemplated by the Legislature for the purpose of grant of benefit of deduction under Section 80-IC, we would think that with regard to the fact that interest, which is earned by the appellant, has nothing to do with carrying on of the business *per se*, namely, manufacture and sale of the articles in question, the appellant would not be entitled to the benefit of deduction.

21. The attempts made by Mr. (Dr.) Kartikey Hari Gupta, learned counsel for the appellant to make distinction between Section 80HH and Section 80-IC would, in our opinion, be without any basis. In Section 80HH and in Section 80-IC, what is contemplated is deduction of the income derived from profits of business. In Section 80-IC, no doubt, it is provided that it may be an income derived by an undertaking or an enterprise. There is no significance to be attached to the employment of words "undertaking or enterprise" in Section 80-IC. As far as resolving the controversy before this Court is concerned, the appellant claims itself to be an undertaking. The employment of the word "enterprise" is essentially to deal with a different form of business organization. Insofar as the appellant is an undertaking, there is no distinction otherwise between the words used in Section 80HH. Further attempt made to draw support from the use of words "from any business" referred to in sub-section (2), in our view, does not deserve any consideration. It is clear that what the Legislature intended was to specify the business, which would entitle the parties to claim deduction under Section 80-IC (2). In this context, Section 2 (29BA) defines the word "manufacture", which reads as follows:

> "(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,--
>
> (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or
>
> (b) brining into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;]"

22. An argument was raised by the learned counsel for the appellant that after the matter was remitted back, in the assessment order passed afresh by the Assessing officer, it is stated as follows:

> "6. In view of the above facts it is obvious that the interest income of Rs. 22,29,129/- is brought to tax under the head "Income from Business and profession" being incidental income attributable to business but cannot be

> said to have been derived from the business of the manufacturing activities of the assessee. Therefore, interest income of Rs. 22,29,129/- is taxed under the head "Income from business and profession" but deduction U/s 80IC is not allowed and the same is added to the total income of the assessee."

23. He would therefore submit that the Assessing Officer has found merit in the contentions of the appellant that the income earned by way of interest actually qualifies as business income and therefore, he relies on the said paragraph.

24. We are afraid that the said contention is misplaced. What the Officer has stated is only that it is treated as a business income, which means that it would be income under Section 28 of the Act, but he has been careful enough to say that the said income is not derived within the meaning of Section 80-IC. Any income, which may be derived from carrying on the business, even if it is incidental, would qualify as business income under Section 28, but that is not the samething as saying that it is a business income, which is derived from the said business. Therefore, we see no merit in the said contention also.

25. Undoubtedly, in Section 2 (13) of the Act, "business" is defined. A definition clause is, undoubtedly, to be considered when interpreting a Statute, but it is always subject to the context being otherwise. We may notice in this regard Section 28 of the Act, which provides for the income coming under the heading 'Profits and gains of business or profession'. We may notice Section 28(i) of the Act, which provides as follows:

> "28. Profits and gains of business of profession.—The following income shall be chargeable to income-tax under the head "profits and gains of business or profession",-
>
> (i) the profits and gains <u>of any business or profession</u> which was carried on by the assessee at any time during the previous year;"

26. Contrast the words used in Section 28 (i), it does not use the word “derive”; it also does not specify any particular business as such. The entire income from trade and business would be reckoned under the heading ‘business income’. In other words, under Section 80-IC, a person, an enterprise or an undertaking is entitled to take the benefit of Section 80-IC only insofar as it carries on business, which is mentioned in sub-section (2) of Section 80-IC and derives profits and gains therefrom.

27. We would think that the contentions otherwise are without any basis. In such circumstances, the question of law is answered against the assessee and in favour of the Revenue. Resultantly, both the Appeals will stand rejected.

(V.K. Bist, J.) **(K.M. Joseph, C.J.)**

15.11.2017 15.11.2017

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