

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.87 of 2007

Date of decision: 26.7.2012

M/s Barclays International

-----Appellant

Vs.

Commissioner of Income tax-I, Jalandhar

----Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE GURMEET SINGH SANDHAWALIA**

Present:- Mr. Ravish Sood, Advocate for the appellant.

Mr. Vivek Sethi, Advocate for the respondent.

Ajay Kumar Mittal, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 15.9.2006 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.511(ASR)/1996 for the assessment year 1992-93. Vide order dated July 14, 2008, the appeal was admitted to consider the following substantial question of law:-

"Whether the assessee is entitled to the statutory benefits under section 80 HHC in respect of the exports made during the years 1988-89 and 1989-90, even when the amount representing the incentives is received during the assessment year 1992-93 particularly when he was following the cash/receipt system of accounting for the years 1988-89 and 1989-90?"

2. Briefly, the facts as narrated in the appeal may be noticed. The assessee firm is engaged in the business of manufacturing and export of hand tools. It is following mercantile

system of accounting. During the assessment year 1992-93, the appellant filed its income tax return declaring an Income of ₹ 24,29,694/- which concluded cash incentive amounting to ₹ 2,11,205/- and IPRS amounting to ₹ 19,98,599/-. During the assessment proceedings, it was submitted before the Assessing officer that in the past there had been a dispute as to whether receipt of cash incentive and IPRS etc. was a revenue receipt or a capital receipt. Therefore, in order to put an end to this controversy, an amendment in law vide Finance Act, 1990 was made wherein sub section (iiib) was retrospectively inserted in section 28 of the Act w.e.f 1.4.1967 according to which cash assistance received or receivable was to be treated as income chargeable to tax w.e.f 1.4.1967. Thus, it was submitted that in the light of the aforesaid retrospective amendment in law, export incentive was to be treated as part of the trading account for the year to which it related i.e. assessment years 1988-89 and 1989-90. The assessee also submitted before the Assessing Officer that deduction under Section 80HHC of the Act was to be allowed out of the profits derived from the export of such goods. The Assessing Officer declined to exclude the aforesaid amounts while framing the assessment. The Assessing officer further disallowed an amount of ₹ 40,500/- being the interest on an amount of Rs.6 lacs that had been given as an advance by the assessee firm to one M/s Chopra Property dealer, New Delhi for the purchase of a plot at New Delhi. Aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) excluded the export incentives

received by the assessee firm in the financial year relevant to the assessment year 1992-93 from the scope of total income for the said year with a direction that the said amounts were to be assessed in the hands of the assessee firm in the assessment years 1988-89 and 1989-90 i.e. the period in which the said Export incentives had become receivable. The CIT(A) further deleted the disallowance of ₹ 40,500/- made by the Assessing officer. Aggrieved by the order, the department filed an appeal before the Tribunal. It was held that though the said export incentives had become receivable in the assessment years 1988-89 and 1989-90, but the same were liable to be included in the total income of the assessee firm for the assessment year 1992-93 and allowed the appeal. Hence this appeal by the assessee.

3. Learned counsel for the assessee submitted that as the assessee was following cash system of accountancy for export incentives, the assessee would be entitled to deduction under Section 80HHC of the Act on the cash incentive and the IPRS received by the assessee during the assessment year 1992-93. Learned counsel relied upon judgment of the Apex court in *B.Desraj v. Commissioner of Income tax*, (2008) 301 ITR 439 to submit that calculation had to be made by working out the deduction keeping in view the export turnover and total turnover of the year in which the assessee had earned the export incentive though it was not received during that year. In other words, it was submitted that the deduction under Section 80HHC of the Act had to be calculated with reference to

export turnover and total turnover of the assessment years 1988-89 and 1989-90 but the same was admissible in the year of actual receipt of export incentive i.e. assessment year 1992-93.

4. Learned counsel for the revenue supported the order passed by the Tribunal.

5. After giving thoughtful consideration to the rival submissions, we find force in the submissions made by learned counsel for the appellant.

6. It is not disputed that the authorities had concurrently recorded that the assessee was following cash system of accountancy in respect of export incentives. Now the residuary question left for consideration would be whether in such circumstances the assessee would be entitled to any deduction under Section 80HHC of the Act or not in the current assessment year in respect of cash incentive and IPRS received by the assessee. This question stands answered by the Hon'ble Apex Court in *B.Desraj's* case (supra) in favour of the assessee. The assessee therein before the Hon'ble Supreme Court was maintaining his accounts under the cash system and had exported textiles/fabrics in the accounting year relevant to assessment year 1990-91 and had received cash compensatory allowance and duty draw back therefor in the next accounting year. Though, the assessee had not done any export business during the assessment year 1991-92, yet the assessee was held entitled to deduction under Section 80HHC of the Act in relation to those items during the assessment year 1991-92. In view of the Apex Court decision in *B.Desraj's* case

(supra), the assessee is entitled to the deduction under Section 80HHC of the Act by taking the export turnover and the total turnover of the year in relation to which the export incentive has been received.

7. Accordingly, the appeal is allowed and the substantial question of law is answered in favour of the assessee. The Assessing Officer shall determine the deduction admissible to the assessee under Section 80HHC of the Act in terms of the observations made hereinabove.

(Ajay Kumar Mittal)
Judge

July 26, 2012
'gs'

(Gurmeet Singh Sandhawalia)
Judge

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