

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

ITA No. 120 of 2011

Date of decision: 02.05.2012

Vishal Tools Industries

-----Appellant

Vs.

Commissioner of Income Tax, Jalandhar (Punjab)

----Respondent

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

**Present:- Mr. Pankaj Jain, Advocate for the appellant.
Mr. Vivek Sethi, Advocate for the respondent.**

Ajay Kumar Mittal, J.

1. This order shall dispose of ITA Nos.120 and 133 of 2011 as learned counsel for the parties are agreed that identical facts and questions of law are involved in both the appeals. However, facts are being taken from ITA No.120 of 2011.

2. The assessee in ITA No.120 of 2011 filed its return on 29.11.2002 declaring income of ₹ 47,56,750/-. The proceedings were concluded vide order dated 31.12.2004, Annexure A.1 determining the assessment at net taxable income of ₹ 65,51,989/-. The Assessing Officer, inter-alia, disallowed deduction under section 80HHC of the Act and levied interest under Section 234B of the Income Tax Act, 1961 (in short, "the Act"). The assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] which was partly allowed vide order dated 27.3.2009, Annexure A.2. Still feeling dissatisfied, the assessee filed an appeal before the Tribunal which was dismissed vide order dated 30.10.2009, Annexure A.4. Hence the

present appeal.

3. In ITA No.120 of 2011, the appellant had filed Civil Miscellaneous Application No.13974 CII of 2011 in which following substantial questions of law had been claimed, which was allowed on 21.11.2011:-

- i) Whether on the true and correct interpretation of Section 234B the levy of interest is mandatory where there is a conflict of decision and the admitted liability stands paid?
- ii) Whether on the true and correct interpretation of Section 57(iii) of the claim of expenditure for earning the interest is to be allowed?
- iii) Whether on the true and correct interpretation of section 57(iii) of the claim of expenditure for earning the interest is to be allowed under the head 'Income From Other Sources' while computing the Chargeable income?
- iv) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in denying the benefit for 'netting of' for interest to the assessee while computing deduction under Section 80HHC of the Act?"

4. In the above order, it was also recorded that learned counsel for the assessee had conceded that questions No.(i) to (iii) stood concluded against the assessee and in favour of the revenue in view of judgment of this Court dated 20.5.2011 in ITA No.121 of 2011 (***Vishal Tools & Forgings Private Limited v. Commissioner of Income Tax, Jalandhar (Punjab)***). Today, arguments have been addressed by learned counsel for the assessee on Question No. (iv) only. He submitted that netting of interest for purposes of calculation

for computing deduction under section 80HHC of the Act was required to be done and relying upon judgment of the Apex court in *ACG Associated Capsules Private Limited v. Commissioner of Income Tax, Central-IV, Mumbai*, (2012) 3 SCC 321 and judgment of Delhi High Court in *Commissioner of Income Tax. Vs. Shahi Export House*, (2010) 46 DTR (Del.) 34, submitted that the matter requires to be remanded to the Assessing Officer to re-compute deduction under Section 80HHC of the Act in terms of the aforesaid judgment of the Apex Court.

5. Learned counsel for the revenue did not dispute the aforesaid submission.

6. In view of the above, the Question No.(iv) stands answered in terms of judgment of the Apex Court in *ACG Associated Capsules Private Limited's* case (supra) and the matter is remanded to the Assessing Officer for passing fresh order in terms of the said judgment with regard to the claim of the assessee under section 80HHC of the Act.

7. Accordingly, both the appeals are disposed of.

(Ajay Kumar Mittal)
Judge

May 02, 2012
'gs'

(Gurmeet Singh Sandhawalia)
Judge