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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 19th April, 2012.

+ **ITA No.133/2006**

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeev Sabharwal, sr. standing
counsel

versus

M/S HIGH POLYMER LABS LTD. Respondent
Through Mr. Badri Nath, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

In this appeal which pertains to assessment year 1996-97, the following two substantial questions of law were framed vide order dated 22.08.2006 :

“1) Whether the Income Tax Appellate Tribunal was correct in law in holding that the assessee is entitled to reduce interest paid by it on bank overdrafts from the interest received on FDRs while calculating deductions under Section 80HHC read with Explanation (baa) of the Income Tax Act, 1961.

2) Whether the Income Tax Appellate Tribunal was correct in law in holding that profit from the sale of EDP receipts under the duty remission scheme cannot be excluded from the profits of business as per Explanation (baa) for purposes of computing the deductions under Section 80HHC of the Income Tax Act, 1961.”

2. High Polymer Labs Ltd., the respondent-assessee is a company, which is engaged in exports. For the assessment year in question they had claimed deduction under Section 80HHC of the Act and for the purpose of computation had included (i) interest earned on FDRs which had been deposited with the bank to obtain credit facilities for the purpose of export and (ii) receipts from group companies/firms for use of computers called EDP receipts as income derived from exports.

3. The Assessing Officer did not treat the two receipts as income derived from exports and re-computed the deduction under Section 80HHC, which got reduced from Rs.60,83,721/- to Rs.56,98,703/-.

4. The aforesaid finding recorded by the Assessing Officer were affirmed in the first appeal by the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) further held that the income by way of interest was not income derived from exports and even netting of interest income for the purpose of Explanation (baa) to Section 80HHC was not permissible. He held that EDP receipts cannot form part of business income and should be

treated as 'income from other sources'.

5. On further appeal, the Tribunal has held that the two incomes have to be taken into consideration for the purpose of Explanation (baa) to Section 80HHC. Finding recorded is that the interest earned on FDR, which was placed with the bank for the purpose of export trade were assessable under the head 'income from business'. With regard to the EDP income also it has been held that this income was chargeable under the head 'income from business' as the group companies had utilized computers and office equipment belonging to the respondent-assessee.

6. Thus, both interest income and income from EDP it has been held are assessable under the head 'income from business' and not under the head 'income from other sources'. To this extent, finding of the Tribunal is clear and lucid.

7. There is no doubt that the two incomes are not derived from exports but this aspect is not required to be examined by us. The assessee has also accepted the said position. The only question, raised is whether these two incomes can be taken into consideration while applying Explanation (baa) to Section 80HHC. The issue is no longer in dispute and has been answered in the case of *ACG Associated Capsules Pvt. Ltd. Vs. Commissioner of Income Tax, Central-IV, Mumbai* (2012) 3 SCC 321. In this decision, it has been held :-

“11. Before we deal with the contentions of learned counsel for the parties, we may extract Explanation (baa) to Section 80HHC of the Act :

“Explanation.- For the purposes of this section,-

* * *

(baa) “profits of the business” means the profits of the business as computed under the head ‘Profits and Gains of Business or Profession’ as reduced by-

(1) ninety per cent of any sum referred to in clauses (iii-a), (iii-b), (iii-c), (iii-d) and (iii-e) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;”

12. Explanation (baa) extracted above states that “profits of the business” means the profits of the business as computed under the head “Profits and Gains of Business or Profession” as reduced by the receipts of the nature mentioned in clauses (1) and (2) of the Explanation (baa). Thus, profits of the business of an assessee will have to be first computed under the head “Profits and Gains of Business or Profession” in accordance with provisions of Section 28 to 44-D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and

gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under Sections 30 to 44-D have to be allowed as expenses. After including such receipts of income and after deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head “Profits and Gains of Business or Profession” from which deductions are to be made under clauses (1) and (2) of Explanation (baa).

13. Under Clause (1) of Explanation (baa), ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head “Profits and Gains of Business or Profession”. The expression “included any such profits” in clause (1) of the Explanation (baa) would mean only such receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of the business as computed under the head “Profits and Gains of Business or Profession”. Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under Sections 30 to 44-D of the Act and is not included in the profits of business as computed under the head “Profits and Gains of Business or Profession”, ninety per cent of such quantum of receipts cannot be reduced under Clause (1) of Explanation (baa) from the profits of the business. In other words, only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be

deducted from the profits of the assessee for determining “profits of the business” of the assessee under Explanation (baa) to Section 80-HHC.”

8. The Supreme Court in this case also referred to the earlier decision of the constitution bench in *Distributors (Baroda) (P) Ltd. Vs. Union of India* (1986) 1 SCC 43 and thereafter observed in para 16 and 17 as follows :

“16. Similarly, Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in Explanation (baa), the words “receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits” will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head “Profits and Gains of Business or Profession” referred to in the first part of the Explanation (baa). Accordingly, if any quantum of any receipt of the nature mentioned in clause (1) of Explanation (baa) has not been included in the profits of business of an assessee as computed under the head “Profits and Gains of Business or Profession”, ninety per cent of such quantum of the receipt cannot be deducted under Explanation (baa) to Section 80-HHC.

17. If we now apply Explanation (baa) as interpreted by us in this judgment to the facts of the case before us, if the rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax under Section 28 of the Act, and if any quantum of the rent or interest of the assessee is allowable as an expense in accordance

with Sections 30 to 44-D of the Act and is not to be included in the profits of the business of the assessee as computed under the head “Profits and Gains of Business or Profession”, ninety per cent of such quantum of the receipt of rent or interest will not be deducted under clause (1) of Explanation (baa) to Section 80-HHC. In other words, ninety per cent of not the gross rent or gross interest but only the net interest or net rent, which has been included in the profits of business of the assessee as computed under the head “Profits and Gains of Business or Profession”, is to be deducted under clause (1) of Explanation (baa) to Section 80-HHC for determining the profits of the business.”

9. In view of the aforesaid position, the questions of law mentioned above are answered in affirmative, in favour of the assessee and against the Revenue. The appeal is disposed of. No order as to costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

APRIL 19, 2012

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