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

% *Date of Judgment: 17th January, 2018*

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ITA 583/2005

COMMISSIONER OF INCOME TAX DEL Appellant
Through Mr. Puneet Rai, Adv.

versus

M/S BANARAS HOUSE LTD. Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue pertains to the Assessment Year 1996-1997 and arises from the order of the ITAT dated 29.11.2004 passed in ITA No. 2074/Del/2000 in the case of M/s Banaras House Ltd.

2. By order dated 02.08.2005, the appeal was admitted and the following substantial questions of law were framed:-

1) Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that for the purposes of applying explanation (baa) below Sub-Section 4B of Section 80HHC and while deducting 90% of the receipt by way of interest from the profits of the business, it is only the 90% of the net interest remain after allowing a set off of interest paid?

2) Whether the Ld. ITAT was correct in law and in facts and circumstances of the case in deleting the addition of Rs.18,90,273/- made by

the A.O. by invoking the provisions of Section 41 (1) of the Act?”

3. We have heard counsel for the appellant but there is no appearance on behalf of the counsel for the respondent/assessee in spite of service.

4. The first question of law is covered by decision of this Court in *Commissioner of Income Tax Etc. v. Shri Ram Honda Powers Equipment Ltd. (2007) 289 ITR 475 (Del)* and the Supreme Court in *ACG Associated Capsules P. Ltd. v. The Commissioner of Income Tax, Central-IV Mumbai (2012) 343 ITR (SC)*. The Assessing Officer will apply their ratio on applicability and effect of Explanation (baa) and compute deduction under Section 80 HHC of the Act.

5. The first question of law is answered accordingly.

6. We now turn to the second question. Assessee during the course of the assessment proceedings had furnished details of creditors. The Assessing Officer made addition of Rs.18,90,273/- under Section 41(1) of the Act in case of old creditors i.e., where there was no transaction between the assessee and the creditors during the last three years or more. The Assessing Officer held that there has to be some time limit for the credit recorded to be carried forward.

7. The addition was partly confirmed by the Commissioner of Income Tax (Appeal), who had tallied the list of old creditors with payments by the assessee to these creditors in the subsequent years. The Assessing Officer was required to verify and rectify, if required. He observed that Rs.8,32,130/- had not still not been paid.

8. Income Tax Appellate Tribunal on the said issue held that the assessee had carried forward the balances from earlier years. Some credit balances were written off in the year in question and some in succeeding years. Further, when a liability was acknowledged by the debtor, it cannot be said that the claim of the creditor was barred by limitation. In case of 16 creditors, the credit balance was returned or adjusted for the next financial year. Provisions of Section 41(1) of the Act were not attracted.

9. We do not see any error in the findings and reasons given by the Tribunal. The respondent assessee is a company and accounts were audited as per the mandate of the Companies Act. In the accounts, the respondent assessee had accepted and acknowledged its liability. The creditors can rely on the said acknowledgment. Even otherwise many of the creditors were paid, adjusted or eased in the subsequent years as accepted by the Commissioner of Income Tax (Appeals) and the Tribunal. No special facts or reasons were given by the Assessing Officer to hold and observe that the liabilities had ceased and amounts should be added under Section 41(1) of the Act.

10. The second question is accordingly decided against the revenue and in favour of the assessee.

11. The appeal is disposed of without any order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 17, 2018/b