IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 1321/Del/2012
Assessment Year: 2007-08

ACIT, Circle-2, Gurgaon	Vs.	M/s QH Talbros Ltd., Plot No. 400, Udyog Vihar, Phase-III, Gurgaon (PAN: AAACO2191D)
(Appellant)		(Respondent)

And

ITA No. 1320/Del/2013
Assessment Year: 2008-09

DCIT, Circle-2, Gurgaon	Vs.	M/s QH Talbros Ltd., Plot No. 400, Udyog Vihar, Phase-III, Gurgaon (PAN: AAACO2191D)
(Appellant)		(Respondent)

Appellant by :Smt. Anjula Jain, Sr. DR
Respondent by : Sh. V.K. Aggarwal, AR

Date of hearing: 29.10.2015
Date of pronouncement: 04.11.2015

ORDER

PER INTURI RAMA RAO, A.M.:

The present appeals filed by the Revenue are directed against the orders of CIT(A), Faridabad, dated 27.12.2011 and 20.12.2012 passed for the assessment years 2007-08 and 2008-09 respectively. The Revenue raised the following grounds of appeal in ITA No. 1321/Del/2012:

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the disallowance of Rs.1,57,09,203/-which is not eligible for deduction u/s 10B of the Income Tax Act, 1961 in view of the following facts:-

i) The facts and circumstances of the instant case are different and distinguishable from the facts and circumstances of the case of CIT vs Baby Marine Export (290 ITR 323). The reliance placed on this case by the Ld. CIT(A) is misplaced.

ii) Export incentive in the instant case is received from the Government of India on account of provisions of Exim Policy while 'Export Premium' in the Baby Marine Exports (Supra) is received from the export house through which export is made.

iii) The reliance is placed on the decisions of Hon'ble Supreme Court in the cases of (1) M/s Liberty India vs CIT SLP (C) No. 5827/07(SC) and (2) CIT vs Sterling Foods [1999] 237 ITR 579 (SC). In these cases, the issues related to various incentives received by Exports on account of different Government Schemes, for example, Import Entitlements, Duty Drawback and DEPB etc, have been duly dressed by Hon'ble Supreme Court which are squarely applicable to the instant case.

iv) The receipt of 'Export Incentive' from the Government of India on account of purchase from DTA Seller is only an income incidental and 'attributable' to the business of assessee. This income does not qualify to be called an income 'derived from' business activity of the undertaking as there is not direct nexus between the two.

v) Export inventive is not eligible for computing the allowable deduction u/s 10B of the Act.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the disallowance of interest of Rs.3,90,000/- on the investment made for non business purpose. The reliance is placed on the decision of Hon'ble jurisdictional Punjab & Haryana High Court in the case of Abhishek Industries (286 ITR 1) held that "the entire money in a business entity comes in a common kitty. The monies received as share capital, as term loans, as working capital loan, as sale proceeds etc., do not have any different colour of business receipts and have no separate identification. Sources have no concern whatsoever.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in deleting the disallowance of interest liability of Rs. 65,07,805/- made by AO under section 36(1)(iii) of the

Income Tax Act. The Ld. CIT(A) has ignored the ratio of the decision of Hon'ble High Court of Karnataka in the case of 'CIT, Bangalore vs L.K. Trust. 297 ITR 53' wherein it has been held that 'where the interest is paid in respect of the amount borrowed for acquisition of asset, unless asset is acquired and put to use, deduction for the interest cannot be claimed. Allowing any such deduction will be contrary to the proviso to section 36(1)(iii) of the Income Tax Act, 1961

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred on facts and in law in directing the AO to recomputed the book profit u/s 115JB of the Act after allowing deduction of eligible profits u/s 10B of the Act. As the clerical error stands already rectified vide order u/s 154 dated 28.02.2011 and the expenditure relatable to income eligible for deduction u/s 10B has been computed on proportionate basis of the total expenditure in ratio of export turnover divided by total turnover and re-computation of Book Profit u/s 115JB has been made to account for the change in the allowable deduction u/s 10B of the Income Tax Act, 1961.

5. That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.

ITA No. 1321/Del/2012 for AY 2007-08

2. The brief facts of the case are that the respondent assessee company is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and distribution of steering and suspension components of four wheelers. The company supplies to Maruti Udyog Ltd., Tata Motors, General Motors, Mahindra and Mahindra, Ashok Leyland etc. and also exports its products to foreign countries. The return of income for the assessment year 2007-08 was filed on 30th October, 2007, declaring loss of Rs. 70,59,169/-. After processing the said return of income under the provisions of Section 143(1) of the Income-tax Act, 1961 (for short ñthe Actò) the case was selected for scrutiny assessment through CASS and the

assessment was completed by the Asstt. Commissioner of Income Tax, Circle-2, Gurgaon, vide order dated 23rd December, 2010 passed under Section 143(3) of the Act at a total income of Rs. 6,86,14,355/-. While doing so, the learned Assessing Officer had denied the exemption under Section 10B on DEPB, thereby making addition of Rs. 6,87,75,719/-. The learned Assessing Officer further disallowed the interest of Rs. 3,90,000/- under Section 36(1)(iii) of the Act by holding that the assessee company invested a sum of Rs. 32,50,000/- in the subsidiary company, namely, Talbros Automotive Components Ltd. The Assessing Officer further made addition of Rs. 65,07,805/- on the ground that the interest was paid on the borrowed funds for acquisition of the assets which were not put to use. Being aggrieved by this assessment order, an appeal was filed before the learned CIT(A), Faridabad, who vide impugned order dated 27.12.2011 allowed the same. Being aggrieved by the CIT(A)ös order, the Revenue is before us with the present appeals.

3. Before us, the learned Sr. DR contended that the export incentive received is not a profit derived from the undertakings, therefore is not eligible for deduction under Section 10B of the Act. In support of this contention, he relied upon the following decisions of Honöble Supreme Court:

i. M/s Liberty India Vs. CIT, SLP (C) No. 5827/07 (SC)
ii. CIT Vs. Sterling Foods [1999], 237 ITR 579 (SC)

Therefore, he submitted that the CIT(A) was not justified in granting the relief. In respect of the disallowance of Rs. 3,90,000/-, he submitted that the

ratio laid down by the Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries (286 ITR 1) is squarely applicable and in respect of interest disallowed under Section 36(1)(iii), he relied on the order of the Assessing Officer.

4. On the other hand, the learned Authorized Representative vehemently argued that the order of learned CIT(A) was in consonance with the law laid down by the Hon'ble Jurisdictional High Court in the case of Principal Commissioner of Income Tax Vs. Universal Precision Screws, ITA No. 392/2015, dated 6th October, 2015 and does not call for any interference. In respect of the disallowance of interest on investments made to the sister concern, the learned Authorized Representative submitted that no interest expenditure was incurred since no borrowed funds were invested in the sister concern and therefore no disallowance is called for. In respect of the addition of interest in terms of proviso to section 23(1)(iii), it was submitted by the assessee on its own made disallowance of interest up to date on which the excess were put to use and therefore no further disallowance was called for. Therefore, he submitted that the order of CIT(A) may be sustained.

5. We heard the rival submissions and perused the material on record. The first ground of appeal relates to whether DEPB benefits are eligible for deduction under Section 10B of the Act. The issue is no more *res-integra* as the Hon'ble Jurisdictional High Court in the case of Principle Commissioner of

Income Tax Vs. Universal Precision Screws, ITA No. 392/2015, dated 06.10.2015 and CIT Vs. XLNC Fashions, ITA No. 438/2014, dated 01.09.2014 and CIT Vs. Hritnik Exports Pvt. Ltd., ITA No. 219 & 239 of 2014, dated 13th November, 2014 held that the business profit should be considered for the purpose of deduction under Section 10B of the Act. The Hon'ble Delhi High Court in the case of XLNC Fashions (supra) held as follows:

"Deduction under Section 10B of the Income Tax Act, 1961 (Act, in short) is to be made as per the formula prescribed by Sub-Section (4), which reads as under:

"10B. Special provision in respect of newly established hundred per cent export-oriented undertakings-

....

……….....

(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking".

Sub-section (4), therefore, is the special provision which enables the assessee to compute the profits derived from the export of articles or things or computer software. We do not see any conflict between Sub- section (1) and Sub-section (4) to Section 10B, as Sub-section (1) states that deduction of such profits and gains as are derived by a hundred percent export-oriented undertaking from the export of articles or things or software would be eligible under the said Section. Sub- section (1) is a general provision and identifies the income which is exempt and has to be read in harmony with Subsection (4) which is the formula for finding out or computing what is eligible for deduction under Sub-section (1). Neither of the two provisions should be made irrelevant and both have to be applied without negating the other. In other words, the manner of computing profits derived from exports under Sub-section (1), has to be determined as per the formula stipulated in Sub-Section (4), otherwise Sub-section (4) would become otiose and irrelevant.

The issue in question in this appeal which pertains to the Assessment Year 2009-10, relates to duty draw back in the form of DEPB benefits. As per Section 28, clause (iii-c), any duty of customs or excise repaid or repayable as drawback to a person against exports under Customs and Central Excise Duties Draw Back Rules, 1971 is deemed to be profits and gains of business or profession. The said provision has to be given full effect to and this means and implies that the duty draw back or duty benefits would be

deemed to be a part of the business income. Thus, will be treated as profit derived from business of the undertaking. These cannot be excluded.

Even otherwise, when we apply Sub-section (4) to Section 10B, the entire amount received by way of duty draw back would not become eligible for deduction/exemption. The amount quantified as per the formula would be eligible and qualify for deduction/exemption. The position is somewhat akin or close to Section 80HHC of the Act, which also prescribes a formula for computation of deduction in respect of exports."

Further, in the case of Principal Commissioner of Income Tax Vs. Universal Precision Screws (supra) the Hon'ble Delhi High Court held as follows:

"9. On the question of interest on the FDRs, the ITAT has referred to Section 10B (4) which states that for the purposes of Section 10B (1), the profits derived from export of articles or things or computer software "shall be the amount which bears to the profits of the business of the undertaking", the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.' As noted by this Court in CIT v. Hritnik Exports Pvt. Ltd. (decision dated 13th November, 2014 in ITA No.219 & 239 of 2014), Section 10B (4) mandates the application of the formula for determining the profits derived from exports for the purposes of Section 10B(1). In other words, the formula would read thus:

$$\text{Profits derived from export} = \text{profits of the business of the undertaking} \times \frac{\text{export turnover}}{\text{total turnover}}$$

9A. In terms of the above formula, the question that would arise is whether the interest on the FDRs could form part of the 'profits of the business of the undertaking'. The attention of the Court has been drawn to the decision of the Karnataka High Court in CIT v. Motorola India Electronics Pvt. Ltd. (2014) 46 Taxmann.com 167 (Kar.) which held that there was a direct nexus between the interest received from the FDRs created by a similarly placed Assessee from the amounts borrowed by it. The High Court approved the order of the ITAT in that case which held that the entire profits of the business of the undertaking should be taken into consideration while computing the eligible deduction under Section 10B of the Act by ITA 392/2015 Page 5 of 5 applying the mandatory formula."

6. Thus, the Hon'ble High Court has categorically held that the export benefits of DEPB interest should be considered for the purposes of deduction under Section 10B of the Act. Respectfully following the ratio laid down in the

above cases, we direct the Assessing Officer to consider the export benefits for the purpose of deduction under Section 10B of the Act. Therefore, the reasoning of CIT(A) while allowing these grounds of appeal is upheld. Hence, the ground of appeal file the Revenue is dismissed.

7. The second ground of appeal relates to deletion of addition of Rs. 3,90,000/- made on account of interest for the investments made on the subsidiary company of the respondent assessee company. The Assessing Officer made this addition relying upon the decision of Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries (286 ITR 1). This decision was reversed by the Hon'ble Supreme Court in the case of Munjal Sales Corporation Vs. Commissioner of Income Tax, Civil Appeal Nos. 1378 to 1382 of 2008, dated 19th February, 2008 (2008-TIOL-26-SC-IT). We find that the ratio of Hon'ble Supreme Court in the said decision is squarely applicable to the facts and circumstances in the present case as the aggregate share capital and free reserve was stood at Rs. 15,57,04,538/- . The aggregate share capital are more than the investments made in the subsidiary company and it should be presumed that the investments are made out of the interest free funds and therefore, this ground of appeal filed by the Revenue is also dismissed.

8. The third ground of appeal relates to the disallowance of Rs. 65,07,805/- made on the ground that the interest incurred till the date of assets put to use should be disallowed. The contention of the respondent assessee company is that

the assessee company on its own made disallowance of Rs. 7,35,226/- in respect of the interest liability incurred for the acquisition of assets till the date the assets were put to use. This contention had not been dislodged by the Department Representative and no further disallowance is called for. This ground of appeal filed by the Revenue is dismissed.

9. Ground no. 4 relates to the direction of the CIT(A) to verify the amount of deduction eligible under Section 10B of the Act. In our considered view, this direction is in consonance with the settled principle of law and therefore, no prejudice is caused to the Revenue on account of this direction. Hence, this ground of appeal is also dismissed.

10. The ground no. 5 is general in nature which does not require any adjudication.

ITA No. 1320/Del/2013 for AY 2008-09:

11. Ground nos. 1, 2 and 3 are similar to the grounds of appeal raised in ITA No. 1321/Del/2012 for AY 2007-08. For the reasons mentioned in our order in ITA No. 1321/Del/2012 for AY 2007-08, the grounds of appeal raised by the Revenue are dismissed.

12. Ground no. 4 relates to the disallowance of Rs. 17,58,470/- under the provisions of Section 14A of the Act. During the previous relevant to the assessment year under consideration, the respondent assessee company received dividend of Rs. 4,92,706/- from IDBI Bank. It was the contention of the

respondent assessee that no expenditure was incurred to earn the dividend income. The Assessing Officer without giving any reason as to how he is not satisfied with the correctness of the claim of the respondent assessee company had proceeded with the disallowance. The Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs. CIT, 2011-TIOL-753-HC-DEL-IT, held that no such disallowance was permissible without recording the reasons as to how the claim is incorrect. Therefore, the grounds of appeal filed by the Revenue are dismissed.

11. In the result, both the appeals filed by the Revenue are dismissed.

The decision is pronounced in the open court on 4th November, 2015.

Sd/-	**Sd/-**
(SUCHITRA KAMBLE)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 4th November, 2015.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi