

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

I.T.A. No. 432 of 2005

Date of decision : 31.5.2007

M/s Phatela Cotgin Industries (P) Ltd.

....Appellant through
Mr.Pankaj Jain,
Advocate

Versus

Commissioner of Income-Tax

...Respondent through
Mr. Yogesh Putney,
Advocate

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Vijender Jain, Chief Justice

The assessee has preferred the present appeal against the order of the Income Tax Appellate Tribunal, Delhi Bench dated 30.11.2004 pertaining to the assessment year 1997-98.

The assessee, who is in the business of ginning and pressing of cotton, filed the return of income on 21.11.1997 at an amount of Rs.8,63,500/- for the assessment year 1997-98. The Assessing Authority disallowed the deduction under Section 80-HH and 80-I of the Income-tax Act in respect of the amount of Rs.2,76,009/-, which was claimed by the assessee as an income on

account of interest and carrying charges, and treated it to be an income on account of interest on trade debtors and creditors against the regular business transactions of sale and purchase having been carried on and conducted by the assessee.

The Assessing Authority primarily disallowed the deductions on the ground that the interest and carrying charges is an income which has not been derived from the industrial undertaking and that such an activity cannot be treated to be an essential part of the industrial undertaking. The Tribunal upheld the order of the Assessing Authority which has resulted in the present appeal having been filed before this Court raising the following substantial questions of law:

“a. Whether under the facts and circumstances of the case the Tribunal is justified in disallowing the deduction u/s 80-HH, 80-I by misreading the facts and misplacing the reliance on the judgment for the issue not in dispute.

b. Whether on the true and correct interpretation of the facts the deduction u/s 80-HH, 80-I is to be allowed on the interest income being out of the debtors for the goods manufactured in the business.”

Learned counsel for the appellant contended that on similar facts the deduction was allowed for the previous years by the Tribunal but the same has been disallowed by the respondent for the years 1993-94 and 1995-96 and the benefit of the deduction under Sections 80-HH and 80-I was allowed to the appellant.

The assessee had claimed deductions under the following heads :

- i) Rent Receipt;
- ii) Interest Receipt ; and
- iii) Weighment Charges;

and pleaded that this be treated as income derived from the industrial undertaking. The interest income was received from the customers on account of the belated payments of the sale proceeds of the manufactured articles.

Reliance was placed on the decision in **Pandian Chemicals Ltd. v. Commissioner of Income-tax** (2003) 262 ITR 278 (SC) and **Commissioner of Income-tax v. Paras Oil Extraction Ltd.** (1998) 230 ITR 266 (MP). While interpreting the words “derived from” the apex court in **Pandian Chemicals' case (supra)** observed as under :

“The words “derived from” in section 80HH of the Income-tax Act, 1961, must be understood as something which has a direct or immediate nexus with the assessee's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking.”

In **Paras Oil Extraction Ltd. case (supra)** it has been observed as under:

“The words “derived from an industrial undertaking”

mean that the income has been derived from industrial activity which the industry is undertaking and it does not mean any industrial activity undertaken by the assessee. The words “industrial undertaking” have to be construed narrowly and cannot be given a wide meaning. What is to be seen is as to what is the activity of the industrial undertaking of the assessee. In the instant case the industrial undertaking of the assessee was involved in the business of oil extraction and not in the business of letting out weighing machine for consideration and in granting loans on interest. Neither of the activities was an essential part of the activities of the industrial undertaking of the assessee. Therefore, the assessee-company was not entitled to deduction under sections 80HH and 80-I in respect of weightment charges and interest receipts included in miscellaneous receipts.”

The Tribunal had disallowed the benefit to the appellant on the ground that the appellant had been unable to demonstrate that the income derived by way of interest was on account of delayed payments and treated it to be at par as that what has been derived from a fixed deposit.

We have considered the arguments of the learned counsel for the appellant and that of the respondent who had tried to justify the order of the Tribunal by saying that it was the failure of the appellant to adduce the evidence to establish that the interest was on account of belated payments.

On a perusal of the orders of the previous years wherein similar benefit had been allowed, it transpires that there was no distinction between the assessment and the benefit claimed for them and the year under question i.e. 1997-98. That being so, the Tribunal was clearly unjustified in not allowing the benefit under Sections 80-HH and 80-I to the appellant especially when the same had been allowed for the previous years for a similar activity. The interest which is received on delayed payments on account of the sale to the customers of the manufactured goods can clearly be termed to be an income derived from industrial undertaking and distinct from the income on account of interest which has been received from the fixed deposit.

Consequently, we accept the appeal and answer the question as above.

(VIJENDER JAIN)
CHIEF JUSTICE

31.5.2007

((MAHESH GROVER)
JUDGE

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