

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA Nos. 4468 & 4469/Del./2017
Assessment Years: 2010-11 & 2011-12

M/s. Continental Engines Pvt. Ltd., 3 rd Floor, Tower-D, Global Business Park, M.G. Road, Gurgaon	Vs.	DCIT, Central Circle-26, New Delhi
PAN :AABCC9896N		
(Appellant)		(Respondent)

Appellant by	Shri K.V.S.R. Krishna, Adv.
Respondent by	Ms. Nidhi Srivastava, CIT(DR)

Date of hearing	24.12.2020
Date of pronouncement	08.01.2021

ORDER

PER O.P. KANT, AM:

These two appeals by the assessee are directed against a common order dated 30/03/2017 passed by the learned CIT(Appeals)-31, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2010-11 and 2011-12 respectively. As common issue in dispute are involved in both the appeals, same were hard together and disposed off by way of this consolidated order for convenience.

2. The grounds raised in ITA No. 4468/Del/2017 for assessment year 2010-11 are reproduced as under:

1. *The addition by way of reduction in claim of 10B has no nexus to the search and seizure operation and consequently the order u/s 153A/143(3) in so far as reduction in the claim of 10B is wrong and bad in law and should be deleted.*
2. *Without prejudice, the Id. CIT(A) has erred in confirming the AO's order and reducing the claim u/s 10B with respect to Misc. income and interest income. Both the incomes are profits of the business of the undertaking and eligible for 10B deduction.*
3. *The above grounds are independent of and without prejudice to one another.*
4. *The appellant prays that he may be allowed to add, alter, amend or delete any of the grounds at the time of hearing.*

3. Briefly stated facts of the case are that the assessee was engaged in the business of manufacturing of automobile parts. For the year under consideration, the assessee filed return of income in terms of section 139 (1) of the Income-tax Act, 1961 (in short 'the Act') on 13/10/2010 declaring loss of ₹ 8,57,15,202/-, which was further revised under section 139(5) of the Act on 22/03/2011 at loss of ₹ 9,11,16,007/-. The return of income filed by the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued.

3.1 Subsequently, a search and seizure operation under section 132 of the Act was carried out on 10/12/2012 at the premises of the assessee and consequently, notice under section 153A of the Act was issued asking the assessee to file the return of income. In response, the assessee filed return of income on 31/12/2013 declaring loss of ₹ 9,91,16,007/- and assessment was completed under section 153A read with section 143(3) of the Act on 27/03/2015, after disallowing deduction under section 10B of

the Act on interest income (Rs.90,73,212/-), scrap sales (Rs.51,88,633/-) and miscellaneous income (Rs.82,51,135/-)

3.2 On further appeal, the Learned CIT(A) allowed deduction under section 10B of the Act on the scrap sales of ₹ 51,88,633/-, however, sustained the disallowance of deduction in respect of interest income and miscellaneous income.

3.3 Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced.

4. Before us, both the parties appeared through Videoconferencing facility and filed submissions through emails. The Learned Counsel of the assessee filed a paper-book containing case laws.

5. Before us, the Learned Counsel of the assessee submitted that case of the assessee is fully covered by the decision of the Tribunal in the case of the assessee for assessment year 2008-09 and 2006-07 and following three decisions:

1. *PCIT Vs. Dishman Pharmaceutical and Chemicals Ltd. [2019], 417 ITR 313 (Guj.)*
2. *Riviera Home Furnishing Vs. Additional CIT [2017] 9 ITR -OL 401 (Del.)*
3. *CIT Vs. Hritik Exports Pvt. Ltd., [2015] 4 ITR OL 267 (DEL)*

6. The learned Counsel submitted that in the above decisions, it is held that for the claim of deduction under section 10A/10B of the Act, the profit and gains of the undertaking should be considered, which include income like provisions written back, interest on FDR, sale of the scrap and any other income which forms part of the profit and gains of the business and profession.

He further submitted that interpretation 'derived from' in respect of the cases covered under chapter VIA would not apply to the claim under section 10B of the Act which is governed by specific provision namely 10B(4) of the Act, allowing the benefit in respect of profit of the business of the undertaking. Relying on the decisions, the learned Counsel submitted that miscellaneous income and interest income in the case of the assessee are part of profit of the business of the undertaking and therefore, the assessee is entitled for deduction under section 10B of the Act.

7. On the other hand, the Learned DR submitted that interest income and miscellaneous income are never part of the business of the undertaking. She submitted that there is no detail of the miscellaneous income available on record, on the basis of which it could be establish that it is part of the profit of business of undertaking. Similarly, the source of interest income is also not known from the assessment record. Accordingly, she submitted that issue in dispute may be restored to the Assessing Officer for deciding in accordance with law.

8. We have heard rival submission of the parties on the issue in dispute. We find that ground No. 1 has not been pressed by the Learned Counsel of the assessee. Even otherwise, the assessment u/s 143(3) of the Act was pending and same was abetted due to search action under section 132 of the Act and, therefore, the Assessing Officer is justified in considering the disallowance other than based on incriminating materials found and seized during the course of the search. The ground of the appeal is accordingly dismissed.

9. As far as ground No. 2 is concerned, we find that, the Ld. CIT(A) has sustained the disallowance of deduction u/s 10B in respect of interest income of ₹ 90,73,212/- and miscellaneous income of ₹ 82,51,135/-. As far as interest income is concerned, the Ld. CIT(A) followed finding of his predecessor in assessment years 2008-09 and 2009-10, where the interest on margin money was excluded while working out the deduction under section 10B of the Act and accordingly, he held that income from interest was not eligible for deduction under section 10B of the Act. For excluding of miscellaneous income from deduction, the Ld. CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of Liberty India Ltd (SC) 317 ITR 218 and Pandiyan Chemicals(262 ITR 258).

9.1 In the case of Dishman Pharmaceuticals and Chemicals Ltd (supra), Hon'ble High Court of Gujrat after considering various decisions on the issue in dispute held as under:

“62. In view of the aforesaid discussion, we hold that the dividend income, profit on sale of fixed assets, profit on sale of investments, excess provision / return back, duty drawback and interest income could be said to have direct nexus with the income of the business of the undertaking. Although it may not partake of the character of profit and gain from the sale of article, yet it could be termed as an income derived from the consideration realized by the export articles. In view of the definition of "income from profits and gains" incorporated in sub-section (4), the Tribunal committed no error in granting the benefit of exemption, as contemplated under section 10B of the Act.”

9.2 In the case of Riviera Home Furnishing (supra), the Hon'ble Delhi High Court after taking into consideration its decision in the case of Hritnik Exports P. Ltd (supra) held as under:

“17. The contention of the Assessee as regards customer claims was that it had received the claim of Rs. 28,27,224 from a customer for cancelling the export order. Later on the cancelled order was

completed and goods were exported to another customer. The sum received as claim from the customer was non-severable from the income of the business of the undertaking. The Court fails to appreciate as to how the ITAT could have held that this transaction did not arise from the business of the export of goods. Even as regards freight subsidy, the Assessee's contention was that it had received the subsidy in respect of the business carried on and the said subsidy was part of the profit of the business of the undertaking. If the ITAT was prepared to consider the deemed export draw back as eligible for deduction then there was no justification for excluding the freight subsidy. Even as regards the interest on FDR, the Court has been shown a note of the balance sheet of the Assessee [which was placed before the AO] which clearly states that "fixed deposit receipts (including accrued interest) valuing Rs.15,05,875 are under lien with Bank of India for facilitating the letter of credit and bank guarantee facilities." In terms of the ratio of the decisions of this Court both in Hritnik Exports (supra) and Universal Precision Screws (supra), the interest earned on such FDR ought to qualify for deduction under Section 10B of the Act."

9.3 The Learned Counsel of the assessee has contested that both issues are covered in favour by the order of the Tribunal in assessment year 2008-09 (ITA No. 4207/Del/2013) and 2006-07 (ITA No. 4208/Del/2013). The relevant finding of the Tribunal in AY 2008-09 on the issue of the miscellaneous income is reproduced as under:

"5. The first ground is 'against the order of the Ld. CIT(A) allowing the claim of the assessee, to include miscellaneous income in profits of business, for the purpose of computing deduction u/s 10B. The first appellate authority dealt with this issue in para-5 at page 2 of his order. He followed his own decision taken in the year 2006-07 and directed the AO to grant relief. In the asstt. year 2006-07 we find that the miscellaneous income in question pertains to sale of scrap and write off of certain credit balances. Both these items of income have been assessed under the head "income from, business of profession" by the AO. It is not the case of AO that these incomes are assessable under some other head of income and not as income from business. Under these circumstances, we are of the considered opinion that the order of the first appellate authority has to be upheld by applying the decision of the special bench of the Tribunal in the case of Maral Overseas Ld. Vs. ACIT, ITA Nos. 777 & 999 (Ind) of 2004 & 295 & 356 (Ind) of 2006 dated 28.3.2012, where it is held

that in the case of Liberty India, the Hon'ble Supreme Court has dealt with the provisions of section 80LA/80IB of the Act and not section 10B where a formula has been prescribed u/s 10B(4), the application of which would result in arriving at the figure of profits and gains that are to be considered as derived by the 100% EOU, for the purpose of computing exemption u/s 10B (1) Thus a disallowance on the ground that a particular income is not derived from the business is bad in law as the same does not confirm to the formula prescribed under the Act. Ground No. 2 is same as ground No. 1. Hence both ground No. 1 & 2 are dismissed.”

9.4 The finding of the Tribunal in assessment year 2006-07 on the issue of the interest and miscellaneous income is reproduced as under:

“9. The first issue is regarding the deletion of addition of Rs.15,94,813/- by the Ld. CIT(A) on account of disallowance of interest, on interest free loan of Rs.2.64 crores advanced to a subsidiary company. The first appellate authority has given a finding that the AO was factually wrong in holding that the assessee had given interest free advance to its subsidiary, M/s Intermotor B V Holland, Europe.

11. Ground No. 2 is on the disallowance of deduction u/s 10B of miscellaneous income. The miscellaneous income in question is earned from sale of scrap. The income from these item has been assessed under the head "Income from business profession". Under these circumstances there can be no disallowance by applying the proposition laid down by the special bench of the Tribunal in the case, of Maral Overseas Ltd. vs. ACIT ITA Nos. 777 & 999 (Ind) of 2004 & 295 & 356 (Ind) of 2006 dated 28.3.2012 (SB). For the reasons given while dismissing revenue's appeal ground No. 3 & 4 for the asstt. Year 2008-09 ground of the revenue is dismissed.”

9.5 On perusal of the decisions cited by the assessee, we are of the opinion that in terms of section 10B(4) of the Act any profit which is part of the business of the undertaking shall be eligible for deduction in the ratio of export turnover of the articles to the total turnover of the business carried by the undertaking. In the case of Dishman Pharmaceuticals and Chemicals Ltd. (supra), the Hon'ble Court has held that dividend income or profit on sale of

the assets, profit on sale of the investments, excess provision written back, duty drawback and interest income though might not have direct nexus to the business of the undertaking, but they could be termed as income derived from the 'consideration realized by the export articles' and, therefore, eligible for deduction under section 10B of the Act. The Tribunal in the case of assessee for assessment year 2008-09 found that the miscellaneous income was consisted of sale of the scrap and written off certain credit balances. In the year under consideration, there is no detail of source of miscellaneous income available on record except amount of income. In the instant assessment year, the amount of the scrap sales was separately identified and not included in miscellaneous income and so benefit of deduction on a scrap sales has already been allowed by the Learned CIT(A). In absence of detailed source of miscellaneous income, it cannot be decided conclusively, whether it forms part of profit of the undertaking or not. Similarly, in case of the interest income, the Tribunal in assessment year 2006-07 held that amount in question was not interest on loan, but it was investment made in purchase of shares of subsidiary company for the purpose of having control over it. In view of the above distinguishing facts, the ratio of the decision of the Tribunal (supra) cannot be applied in the instant case without verifying the facts. It is also not clear from the order of the Assessing Officer in the instant year, whether the FDR were made for the purpose of the business or for merely earning interest income. No such details have been provided before us also. In view of the facts and circumstances, we feel it appropriate to restore the issue in

dispute to the file of the Assessing Officer for deciding in accordance with law after verifying the source of miscellaneous income and the interest income. It is needless to mention that assessee shall be provided adequate opportunity of being heard. The ground No.2 of the appeal is accordingly allowed for statistical purposes.

10. Ground No. 3 and 4 being general in nature, we are not required to adjudicate upon; accordingly, same are dismissed as infructuous.

11. In ITA No. 4469/del/2017 for assessment year 2011-12 the Assessing Officer disallowed deduction under section 10B of the Act on interest income (Rs.1,08,79,093/-) and scrap sales (Rs.99,02,015/-). The Ld. CIT(A) deleted the disallowance in respect of the scrap sales, however, sustained the disallowance in respect of the interest income.

12. The ground No. 1 in this appeal is identical to No. 1 raised in ITA No. 4468/Del/2017, which we have decided in earlier paragraphs. Accordingly, following our finding, the ground No. 1 is dismissed .

13. As far as ground No. 2 is concerned, in the year under consideration also it is not clear from the order of the Assessing Officer and Ld. CIT(A) as to whether the fixed deposits were made for the purpose of the business of the undertaking or for the purpose of earning purely interest income. No such details have been provided before us also. In absence of such factual information, the issue in dispute in the year under consideration is also restored to the file of the Assessing Officer for deciding

afresh in accordance with law, after providing adequate opportunity of being heard to the assessee.

14. The ground No. 3 and 4, being general in nature, are dismissed as infructuous.

15. In the result, both the appeals are allowed partly for statistical purposes.

Order pronounced in the open court on 8th January, 2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 8th January, 2021.

RK/-(D.T.D.S.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi