

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 2952/Del/2015

AY: 2002-03

Shri Laxmi Narain Khaitan (Proprietor : M/s Vrindavan Carpets) A 41-42, Sector 2 Noida 201 301 PAN: AFRPK1398F	vs.	Addl.CIT, Range-Noida Noida.
---	------------	------------------------------------

(Appellant)

(Respondent)

Assessee by : Sh. R.K.Gupta, Adv. &
Ms. Payal Jain, C.A.

Department by : Sh. Surender Pal, Sr. D.R.

Date of Hearing : 05/11/2018

Date of Pronouncement: 12/11/2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order of Ld.CIT(Appeals)-I, Noida dated 09.02.2015 for A.Y. 2002-03 on the following grounds of appeal:

“1. That the Ld.CIT(A) has erred in law as well as on facts in not directing the A.O. to include only 90% of interest of Rs.40,74,361/- (instead of 100%) as taxable income, in terms of clause (1) of Explanation (baa) of section 80 HHC of the Income Tax Act, 1961.

2. *The appellant craves leave to add, alter, vary, modify or otherwise amend the grounds of appeal before the appeal is finally disposed of.*”

2. Brief facts of the case are as under:

Assessee is a manufacturer and is engaged in business of 100% export of carpets in the name and style of Vrindavan Carpets as proprietor. For the year under consideration he filed its return of income declaring total income of Rs. 1,06,52,905/-. Assessee had claimed deduction under section 80HHC of the Income Tax Act, 1961 (the Act) amounting to Rs.2,48,56,778/- which included interest income of Rs.22,98,544/-.

2.1. During the assessment proceedings assessee revised return of income and interest income of Rs. 20,68,690/- being 90% of net interest of Rs.22,98,544/- was reduced for the purpose of computing deduction claimed under section 80 HHC of the Act. The assessment proceedings under section 143 (3) read with 254 of the Act for year under consideration was due to an order passed by this Tribunal dated 31/10/08 setting aside the assessment by observing as under:

“In the case before us the assessing Officer has not examined the nature of interest receipts. The assessee has also not shown that the interest paid was earned for earning the interest income as held by the Hon’ble Delhi High Court Therefore, in our considered opinion, the matter requires to be set-aside to the file of the assessing officer with the directions to examine the nature of interest earned and- whether the assessee is entitled for netting of interest in view of the decision of Hon’ble Delhi High Court in the

Case of CIT Vs. Shri Ram Honda Power Equip(Supra) . The assessing officer is directed accordingly "

2.2. This Tribunal set aside another issue relating to deduction under section 80HHC of the Act to file of Ld.AO. It was observed that export turnover disclosed for year under consideration was amounting to Rs. 15,47,18,108/-, and DEPB at Rs. 1,17,17,148/-. The deduction under section 80HHC was claimed at 90% of DEPB. While computing assessment under section 143 (3), as the turnover exceeded Rs.10 crores, deduction under section 80HHC on DEPB, was not allowed in view of amendment to section 80 HHC (3) of the Act. In 1st round of proceedings Ld.CIT (A) confirmed action of Ld.AO in disallowing deduction under section 80HHC on DEPB. However this Tribunal vide order dated 31/10/08 set aside the issue by observing as under:

"In our view, neither the assessee furnished the proper reply supported with the necessary evidence nor the assessing officer has examined the issue within the meaning of provisions of section 80HHC of the Act. Accordingly, we are of the considered view that this issue requires fresh examination by the assessing officer. Accordingly, we set -aside the issue to the file of the assessing officer with the directions to examine the matter in the light of third proviso to section 80HHC of the Act and decide the issue afresh."

2.3. Ld.AO accordingly issued notice under section 142 (1) and required assessee to submit reply with necessary evidence in support of his claim of deduction under section 80HHC on interest income and DEPB. Assessee accordingly filed its reply

and furnished details as called for. Assessing Officer again rejected the claim of assessee.

2.4. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A), who upheld action of Ld.AO.

3. Aggrieved by order of Ld.CIT (A), assessee is in appeal before us now.

4. Ld.AR submitted that FDRs were in respect of export activity and therefore had direct nexus with export business of assessee. He placed reliance upon order dated 16/07/09 of this Tribunal in assessee's own case in ITA No. 2913/del/2015 for assessment year 2001-02, wherein netting of interest income for the purpose of computing deduction under section 80HHC has been allowed. She submitted that the Tribunal while granting relief to assessee placed reliance upon the decision of *Hon'ble Bombay High Court* in the case of *CIT vs. Punit Commercial Ltd* reported in (2001) 116 Taxmann 191.

4.1. Ld.AR further submitted that assessee is only carrying out export business and therefore the ratio laid down by *Hon'ble Bombay High Court* in the case of *CIT vs. Punit Commercial Ltd.*, (*supra*) squarely covers the issue in favour of assessee.

5. Ld.Sr.DR though placed reliance upon the orders of authorities below, could not controvert the submissions advanced by Ld.AR.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us.

7. There is no dispute that assessee is 100% export of carpets. Assessee has also filed copy of bank certificate before Ld.AO certifying that bank has provided credit facility to assessee in the

form of packing credit and FDB limits for Rs.4 crores against FDR of Rs.4 crores approximately. On the basis of the above this Tribunal for assessment year 2001-02 granted netting of interest for the purposes of computing deduction under section 80HHC. At this juncture we placed reference to the ratio laid down by Hon'ble *Bombay High Court* in case of *CIT vs Punit Commercial Ltd (supra)* which is as under:

“Suffice it to say that in this matter, the assessee is a 100 per cent exporter. In this case, section 80HHC(3)(a) is applicable as the assessee is a 100 % exporter. Hence, the entire business income is deemed to be profit derived from export of goods. Therefore, the interest income could only fall under ‘business income’. Section 80HHC(3)(a) deals with a 100 per cent exporter whereas section 80HHC(3)(b) deals with composite business. In the latter case, local sales are included. Hence, the entire profits are entitled to deduction. This would include interest income also.”

8. Considering the facts in the present case and the ratio laid down by *Hon'ble Bombay High Court (supra)*, respectfully following the decision, we direct Ld.AO to allow netting of interest in case of assessee for purposes of computing deduction under section 80HHC. Accordingly grounds raised by assessee stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the Open Court on 12/11/2018.

Sd/-

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dt. 12th November, 2018

*GMV

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

	Date
Draft dictated on	08/11/18
Draft placed before author	08/11/18
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on & Order uploaded on :	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	