आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ **ITA No.88/Chd/2009**
निर्धारण वर्ष / Assessment Year : 2003-04

M/s Vardhman Holdings Limited, (Formerly known as Vardhman Spg. & Genl. Mills Limited), Chandigarh Road, Ludhiana.	बनाम	The A.C.I.T., Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AABCV8088P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ **ITA No.118/Chd/2009**
निर्धारण वर्ष / Assessment Year : 2003-04

The A.C.I.T., Circle-1, Ludhiana	बनाम	M/s Vardhman Holdings Limited, (Formerly known as Vardhman Spg. & Genl. Mills Limited), Chandigarh Road, Ludhiana
		स्थायी लेखा सं./PAN NO: AABCV8088P
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Subhash Aggarwal, Adv.
राजस्व की ओर से/ Revenue by : Shri Jagdish Goyal, CIT DR

सुनवाई की तारीख/Date of Hearing : 30.08.2018
उदघोषणा की तारीख/Date of Pronouncement : 26.11.2018

आदेश/ORDER

PER ANNAPURNA GUPTA, A.M. :

The impugned cross appeals by the assessee and the Revenue have been filed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana, (in short ("CIT(A)") dated 17.11.2008 relating to assessment

year 2003-04 , u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. Brief facts of the case are that the assessee is a Public Limited Company with its registered and corporate office at Ludhiana (Punjab) and Baddi (HP). The business of the assessee company is manufacturing and processing of yarn, knitting yarn, fabrics and processed fabrics. The manufacturing unit of the assessee at Baddi i.e. VSGM Baddi is 100% Export Oriented Unit (EOU) and the assessee had claimed exemption u/s 10B of the Act on the profits earned from the same. The assessee has also claimed deduction u/s 80HHC on profits earned from its business of export of trading as well as manufactured goods. Further the assessee company had claimed deduction u/s 80IB of the Act on its Auro Spinning Unit-III, Auro Unit-IV and Auro Unit-V, Auro Weaving-II and Auro Dyeing, Auro Textiles, VSGM 100% EOU. During assessment proceedings, the Assessing Officer (A.O) found that the main issues involved in the case related to netting of interest, exemption u/s 10B of the Act, deduction u/s 80HHC and 8IB of the Act and dividend income and sales tax subsidy ,and accordingly made disallowances/additions in relation to the said issues in his order framed u/s 143(3) of the Act.The said order was contested in appeal before the Ld.CIT(A) who partly allowed the assessees appeal. The issues raised, therefore, in the present appeals by both the parties pertain to the said issues.

3. At the outset itself, the Ld. counsel for assessee stated that all the issues raised in the cross appeals had been dealt with by the I.T.A.T. in the case of sister concern of the assessee, M/s Vardhman Textiles Limited vide their order dated 4.5.2018 in relation to assessment year 2002-03 to 2005-06. A gist of the issues raised in the present appeal and dealt with by the I.T.A.T. in the said order alongwith a copy of the order was filed before us. It was stated that the said order, therefore, was pertinent for adjudicating various grounds raised in the cross appeals before us. Taking note of the same we shall now proceed to adjudicate the cross appeals and shall first be taking up the appeal of the assessee in ITA No.88/Chd/2009.

ITA No.88/Chd/2009(Assessee's appeal):

4. Ground No.1 raised by the assessee reads as under:

> *"1. That the Ld. CIT (A) has erred in law and on facts while confirming the action of the Assessing officer for taxing the capital receipt amounting to Rs.2,04,11,70//- on account of Sales Tax Exemption/Subsidy received from Government of Punjab as the revenue receipt of the appellant."*

5. The above ground is against the action of the CIT(A) in treating the sales tax subsidy received by the assessee amounting to Rs.2,04,11,707/- as revenue receipt against capital receipt claimed by the assessee.

6. Brief facts relevant to the issue are that the manufacturing Unit of the assessee, VSGM(Unit II)set up in Ludhiana, had been granted incentive of Sales Tax exemption in terms of Government notification No.1NC

11/15/43/96-5/IB 4176,dt.01-06-96 vide District Industries Center, Ludhiana. During the impugned year, in the original return filed, the assessee showed subsidy as revenue receipt by way of credit in the Profit & Loss Account but subsequently claimed the same as capital receipt in the revised return filed. During assessment proceedings, the assessee filed details of the scheme of Punjab Government as per which the subsidy had been received and submitted that since the incentive was given to spurt industrial growth as well as for generation of employment opportunities to its unemployed youth through rapid industrialization of the State, the scheme was capital in nature. Reliance was placed on certain case laws but the A.O. dismissed the contention of the assessee after discussing the scheme in detail and referring to judgment in the case of M/s Sahni Steel & Press Works Ltd. Vs. CIT, 228 ITR 253 (SC) and DCIT Vs. Reliance Industries Ltd., 88 ITD 273 (ITAT SB).

7. The assessee went in appeal to the CIT(A) who upheld the order of the A.O. relying upon the judgment of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd., 286 ITR 1.

8. During the course of hearing before us the Ld. counsel for assessee relied upon the submissions made before the lower authorities stating that as per the scheme of the Punjab Government the subsidy had been given to spurt industrial growth as well as for generation of employment opportunities through rapid industrialization in the State

and thus the subsidy received was capital in nature. Copy of the Scheme was placed before us and reliance was placed on several case laws as under:

(*(i) Tribunal's order in the case of Mahavir Spinning Mills vs. ACIT Ltd in ITA No. 344/09 A.Y 1997-98 dated 30.11.2015(Chd) (Pg. 1-8)*

(ii) Tribunal's order in the case of Vardhman Textiles Ltd. vs. ACIT in ITA No. 392/07 AY 2001-02 dated 21.10.15(Chd) (Pg. 135-144)

(iii) CIT vs. Nirma Ltd. 397 ITR 49 (Guj) - Dated 08.6.16. (case law pgs. 212 - 218)

9. Further the Ld. counsel for assessee pointed out that identical issue had been dealt with in the case of sister concern of the assessee M/s Vardhman Textiles Ltd., as pointed out earlier, wherein the I.T.A.T. had held the said subsidy as being capital receipt. Our attention was drawn to the relevant portion of the order dealing with the said issue at pages 27 to 34, more specifically, to the findings of the I.T.A.T. at para 39 of its order wherein following the decision of the I.T.A.T. in the case of Vardhman Acrylic Ltd., Ludhiana Vs. ACIT & Other n ITA No.773/Chd/2012 & Others relating to assessment year 2006-07 and the decision of the I.T.A.T. in the case of Mahavir Spinning Mills Ltd. Vs. JCIT in ITA No.344/Chd/2009 for assessment year 1997-98 the appeal of the assessee was allowed holding the subsidy to be capital in nature.

10. The Ld. DR fairly conceded that the I.T.A.T. in the case of sister concern of the assessee M/s Vardhman Textiles (supra) had held identical subsidy received from the Punjab

Government as capital in nature though at the same time had heavily relied upon the order of the A.O.

11. Having heard the rival contentions we find merit in the contention of the Ld. counsel for assessee. We have gone through the order passed by the ITAT in the case of M/s Vardhman Textiles (supra),relied upon by the Ld.Counsel for the assessee in support of its contention that the subsidy was capital in nature, and find that the facts in the said case were identical, the sales tax subsidy being received by virtue of scheme of the Punjab Government vide the same notification of the Department of Industries as in the case of the assessee. The said fact finds mention in page 27 of the order. The ITAT in the said case followed the decision of its coordinate Bench in the case of Mahavir Spinning Mills Ltd. vs JCIT in ITA No.344/Chd/2009, wherein, we find, this issue had originally been decided by the ITAT against the assessee following the decision of the jurisdictional High Court in the case of Abhishek Industries(supra) ,but on appeal by the assessee, the Hon'ble High Court had restored the matter back to the ITAT to readjudicate the same in the light of the decisions of the apex court in Ponni Sugars & Chemicals Limited. Thereafter, the ITAT had held the subsidy to be capital in nature .

12. In view of the above ,the issue in the present case stands covered as decided in favour of the assessee by the above orders of the ITAT even after considering the decision

of the jurisdictional high court in the case of Abhishek Industries (supra) .

13. Even otherwise, we find that the issue has been settled by various decisions of the Hon'ble Apex Court laying down the proposition that true test for determining the nature of subsidy whether capital or revenue is the purpose test i.e. It is the purpose for which the subsidy has been given which is determinative of the nature of the subsidy and not the manner of disbursement of the same. The manner of calculating the same or even the point of time at which it is disbursed. The Hon'ble Apex Court time and again had reiterated this proposition right from M/s Sahni Steel & Press Works Ltd. and CIT Vs. Ponni Sugar & Chemicals Ltd. 306 ITR 392 and its latest judgment in the case of CIT Vs. Chaphalkar Brothers,Pune In Civil Appeal no.6513-6514 dt. 7th Dec 2017. In the present case undisputedly as per the scheme of Punjab Government the purpose of disbursement is to spurt industrial growth as well as to generate the employment opportunities through rapid industrialization in the State. There is no doubt, therefore, that the nature of the subsidy is capital.

In view of the above ground of appeal No.1 raised by the assessee is allowed.

14. Ground No.2 raised by the assessee reads as under:

> *"2. That the Ld. CIT (A) has erred in law and on facts while allocating Rs. one lac to dividend income earned by the appellant."*

15. In the above ground the assessee has challenged the action of Ld. CIT(A) in allocating expenses of Rs.1 lac attributing the same to dividend income earned by the assessee.

16. Briefly stated, the assessee had returned to tax the gross amount of dividend earned during the year amounting to Rs.321.75 lacs u/s 56 of the Act, without setting off any expenses incurred in relation to the same u/s 57 of the Act. The A.O. allocated a sum of Rs.44.96 lacs (on proportionate basis) out of personnel, finance and administrative expenses, claimed as business expenses by the assessee, attributing the same to having been incurred for the purpose of earning dividend income. Thus the AO reduced the business expenses claimed by the assessee on account of the above, resulting in addition to its taxable income to the said extent. Further the assessee had also claimed deduction of the gross amount of dividend earned u/s 80M of the Act,which was also reduced by the AO after netting expenses incurred for earning the income as aforesaid. The Ld.CIT(A) following his own order for assessment year 2002-03, reduced the expenses allocated to Rs.1 lac.

17. Before us, the Ld. counsel for assessee contended that no expenditure had been incurred for earning dividend income. The Ld. counsel for assessee relied upon the order of the I.T.A.T. in its own case for assessment year 2001-02 in ITA No.280/Chd/2008 dated 28.12.2012 wherein I.T.A.T. had upheld the allocation of Rs.2 lacs to dividend income

earned of Rs.4.50 crores. Copy of the order was placed before us. Reliance was also placed on the decision of the Hon'ble High Court in the case of the assessee itself for assessment years 1994-95, 1995-96, 1997-98 and 2000-01 in ITA No.50/Chd/2012 dated 25.1.2013 wherein allocation of Rs.1 to Rs.2 lacs in various years was upheld. Copy of the order was placed before us. The Ld. counsel for assessee also relied upon the order of the I.T.A.T. in the case of sister concern of the assessee M/s Vardhman Textiles (supra) pointing out that in the said order disallowance of Rs.2 lacs was upheld in assessment year 2002-03 while in the rest of the years the disallowance made was deleted. Our attention was drawn to the relevant findings at page 13 & 14 of the order as under:

> *"7.3 The similar matter was considered by the lTAT in the case of the assessee for the assessment year 2001-02 in ITA No.1174/CHD/2013 vide order dt.16/04/2014 wherein it has been held that the disallowance was made on surmises and there was no merit in the disallowances made wrongly on the premise that borrowed funds were used for investment purpose. The Tribunal has affirmed the confirming of disallowance of Rs. 1,00,000/- made by the Ld. CIT(A). In the instant year the Ld. CIT(A) has confirmed an amount of Rs.2,00,000/- being the expenses incurred for earning of the dividend income. Following the same rationale we hereby uphold the order of the Ld. CIT(A)."*

18. The Ld. DR pointed out that this issue has been dealt with in the case of the assessee in the preceding years right up to the Hon'ble High Court, as pointed out by the Ld. counsel for assessee, upholding allocation of expenses of Rs.1 to Rs.2 lacs.

19. We have heard the rival contentions. We do not find any merit in the present ground raised by the assessee. As

pointed out by the Ld. counsel for assessee himself in the earlier years also, the I.T.A.T. and even the Hon'ble High Court had upheld the allocation of expenses ranging from Rs.1 lac to Rs.2 lacs as being expenditure incurred for the purpose of earning dividend income. Even the I.T.A.T. in the case of sister concern of the assessee i.e. M/s Vardhman Textiles (supra) had confirmed the disallowance of Rs.2 lacs. Considering the past history of the assessee, wherein it has been held by the Hon'ble High Court that expenses ranging from Rs.1 to 2 lacs were to be allocated as incurred for earning dividend income upto Rs.4.5 crores and the Ld.Counsel for the assessee having not pointed out any distinguishing fact in the present case the action of the Ld.CIT(A) in allocating expenses of Rs.1 lac against dividend income earned of Rs.3.21 crores is, therefore we hold, wholly justified. We therefore, see no reason to interfere in the order of the Ld. CIT(A) and the ground No.2 raised by the assessee is, therefore, dismissed.

20. Ground No.3 raised by the assessee reads as under:

> *"3. The Ld. CIT (A) has erred in law and on facts while treating interest income amounting to Rs.34,73,788/- as "Income from other Sources" instead of "Income from Business or Profession".*

21. In the above ground, the assessee has challenged the action of the Ld.CIT(A) in treating the interest income earned by the assessee of Rs.34.74 lacs as income from other sources.

22. During the course of hearing before us, the Ld. counsel for assessee pointed out that the figure of interest mentioned in the assessment order was not correct and the correct figures were tabulated before us as under:

	AO's order	*Correct figures*
Gross interest received	*Rs. 294.83 Lacs*	*Rs. 3.80 Cr.*
Interest from customers/ supplier	*Rs. 257.22 Lacs*	*Rs. 345.75 Lacs*
Interest from bank & others	*Rs. 37.61 lacs*	*Rs. 34.74 Lacs*
Interest Paid	*Rs. 1255.57 Lacs*	*Rs. 9.23 Cr.*

23. Thereafter drawing our attention to the facts of the case it was contended that during the course of assessment proceedings the A.O. in the context of allowing deduction u/s 80HHC raised a query as to why 90% of the interest be not deducted from the profits of the business. The assessee claimed whole of the interest to be in the nature of business income and further contended that since it had also paid interest of Rs.9.23 crores and if the same was netted against the interest income earned there would be no income earned by the assessee and thus no question of reducing 90% of the same from the business of the assessee for the purpose of calculating deduction u/s 80HHC of the Act. Details regarding the same were filed before the A.O. but the A.O. did not agree with the contention of the assessee and held that the gross amount of interest received is to be treated as income from other sources and thus reduced from the profits of the business for the purpose of computation of deduction u/s 10B/80IB/80HHC of the Act.

24. The matter was carried in appeal before the CIT(A) who held that out of the gross interest received, interest received

on belated payments from customers/suppliers was in the nature of business income while the other interest income received from Banks and others amounting to Rs.34.74 lacs was upheld as to be treated as income from other sources

25. During the course of hearing before us, the Ld. counsel for assessee reiterated the contention made before the lower authorities that the interest income should be netted for all purposes and the interest paid by the assessee of Rs.9.23 crores should be set off against the interest received for the purpose of determining whether any interest is to be reduced from the profits of the assessee for the purpose calculating the deduction allowable to the assessee u/s 80HHC of the Act. Reliance was placed on the following decisions in this regard:

1) M/s ACG Associated Capsules Pvt. Ltd. Vs. CIT (2012) 343 ITR 89

2) Vardhman Holding Ltd. Vs. ACIT, ITA No. 280/Chd/2008 dated 28.12.2012 for Assessment year 2001-02.

26. It was further pointed out that identical issue had been dealt with in the case of sister concern of the assessee M/s Vardhman Textiles (supra) wherein netting of interest was allowed. Our attention was drawn to the relevant discussion on the issue at pages 38 to 43 pointing out that the issue dealt with in the said case related to treatment of income as income from other sources and the I.T.A.T. following the decision of the Hon'ble Apex Court in the case of M/s ACG Associated Capsules Pvt. Ltd. (supra) referred the matter to the A.O. to allow the netting of interest if the assessee was

able to prove the nexus between the interest expenditure and interest income.

27. The Ld. DR fairly conceded to the above.

28. We have considered the rival contentions. We find merit in the contention raised by the Ld. counsel for assessee. As pointed out by the Ld. counsel for assessee and as admitted by both the parties, identical issue has been dealt with in the case of sister concern of the assessee M/s Vardhman Textiles (supra) wherein the matter has been restored back to the A.O. to allow the netting if nexus is established between the interest expenses incurred and interest income earned. Following the same we restore the issue back to the A.O. in the present case also for determining the nexus between the interest expenditure and interest income earned and thereafter allow the benefit of netting to the assessee. Ground of appeal No.3 raised by the assessee is, therefore, allowed in above terms.

29. Ground Nos.4 (i) and (ii) were taken up together by the assessee since they related to the same issue of calculation of deduction u/s 10B of the Act .The said grounds read as under:

> *"4. (i) That the Ld. CIT(A) has erred in law and on facts while confirming the action of the assessing officer for applying method of calculating deduction u/s 10B other than that specified u/s 10B and at variance to the method regularly adopted by the appellant in earlier years and accepted by the department.*
>
> *(ii) That the Ld. CIT(A) has erred in law and on the facts while confirming the action of the Assessing officer for*

increasing the Total Turnover of VSGM E.O.U. for calculating exemption u/s 10B of Income Tax Act by the following amounts:

Particulars	*Amount (in Rs.)*
Excise Duty	*64,96,590/-*
Export Turnover of Trading goods	*2,98,73,357/-"*

30. These grounds are against the order of the CIT(A) in upholding the order of the A.O. in treating the excise duty and export turnover of traded goods as part of total turnover of Export Oriented Unit (in short referred to as 'EOU') for the purpose of calculating exemption u/s 10B of the Act. Ld.Counsel for the assessee pointed out from the assessment order that the A.O., after referring to various decisions held that excise duty was to be treated as part of total turnover for computation of deduction u/s 80HHC and included the same in the total turnover of the assessee both for the purpose of computation of deduction u/s 80HHC and 10B of the Act. Further while computing the deduction u/s 10B at the end of the order, the A.O. also added turnover of traded goods to the total turnover. The assessee agitated the same before the CIT(A), submitting that in view of the judgment of the Hon'ble Apex Court in the case of CIT Vs. Lakshmi machine Works, 290 ITR 667 (SC) both excise duty and export turnover of traded goods should not be included in total turnover for calculating deduction u/s 10B of the Act. The CIT(A) did not agree with the submissions of the assessee holding that the ratio was laid down in the context of exclusion of excise duty for the purposes of section 80 HHC of the Act and therefore did not apply for exclusion of the same for the purposes of section 10B. Further it was

held that as per the provisions of section 10B the turnover of traded goods were to be included in the total turnover for the purpose calculation of exemption u/s 10B of the Act.

31. During the course of hearing before us the Ld. counsel for assessee reiterated the contention made before the lower authorities stating that the provisions of sections 10B and 80HHC are pari-materia since they both relate to computation of deduction on export and, therefore, the decision of the Hon'ble Apex Court in the case of Lakshmi machine Works (supra) would apply for the purpose of section 10B also. Reliance was further placed on the decision of the I.T.A.T. in the case of ACIT Vs. VMT Spinning Company Ltd. dated 22.5.2008 in ITA No.690/2007 and on the decision of the Special Bench of the I.T.A.T. in the case of ITO Vs. Sak Soft Ltd. (2009) 313 ITR (AT 3353 (SB)(Mad) for the proposition that the turnover of traded goods is to be excluded from the total turnover. Further the Ld. counsel for assessee drew our attention to the recent order passed by the ITAT Chandigarh Bench in the case of sister concern of the assessee M/s Vardhman Textiles (supra) pointing out therefrom that both the issues of exclusion of excise duty and turnover of traded goods from the total turnover had been decided in favour of the assessee. Our attention was drawn to the order of the I.T.A.T. at paras 10.1 pointing out therefrom that the issue in the said case was identical, being inclusion/exclusion of excise duty and export turnover of traded goods in the total turnover of the assessee for

calculating deduction u/s 10B of the Act. Thereafter our attention was drawn to the findings of the ITAT at para 10.5 holding that the decision of the apex court in the case of Laxmi Machine works (supra) squarely applied to the issue and directing the AO to recomputed the eligible profits as per guidelines laid down therein. Our attention was also drawn to page 35 of the order wherein following the decision of the coordinate bench in the case of VMT Spinning Co.Ltd.(supra), it was held that both the profits and the turnover of export traded goods was to be excluded from the profits and total turnover of the assessee for the purposes of calculating deduction u/s 10B of the Act.

32. The Ld. DR fairly conceded that the issues had been decided in the case of Vardhman Textiles (supra) as stated above though he heavily relied upon the orders of the authorities below.

33. We have gone through the order of the I.T.A.T. in the case of M/s Vardhman Textiles (supra) and find that identical issue had been dealt with in the said case wherein it was held that the decision of the Hon'ble Apex Court in the case of Lakshmi machine Works (supra) would squarely apply for the purpose of calculation of deduction u/s 10B and as per which excise duty was to be excluded from the total turnover of the assessee. Further the I.T.A.T. had also held that the turnover of the trading export activities was to be excluded from the total turnover and the profits of the trading export activity were to be excluded from the profits

for the purpose of calculating deduction u/s 10B of the Act following the decision of the Tribunal in the case of VMT Spinning Company Ltd. (supra). Since the issues in the present case are identical to that in the case of M/s Vardhman Textiles (supra) the decision rendered therein will apply in the present case also, following which we hold that excise duty be excluded from the total turnover for the purpose of calculation of deduction u/s 10B of the Act. But vis a vis the exclusion of export turnover of traded goods ,we find that the in the case of VMT Spinning Mills(supra) ,it was held that deduction u/s 10B was granted qua profits earned on manufactured goods and therefore neither the profits of traded goods was to be included in the profits nor the turnover of traded goods was to be included in the total turnover for calculating deduction u/s 10B of the Act. Accordingly the AO is directed to calculate the deduction u/s 10B of the Act after excluding both the profits and the turnover of export traded goods from the profits of the business and the total turnover.

Ground of appeal Nos.4(i) & (ii) raised by the assessee are, therefore, allowed in above terms.

34. Ground No.4(iii) raised by the assessee reads as under:

> *"(iii) That the Ld. CIT (A) has erred in law and on the facts while confirming the action of the Assessing officer for reducing profits of VSGM E.O.U. for calculating exemption u/s 10B by the following amounts: -*
>
> | *Particulars* | *Amount (in Rs.)* |
> |---|---|
> | - *Loss on Export of Trading Goods* | *1,61,934/-* |
> | - *Rent received from employees* | *1,53,733/-* |
> | - *R & D Subsidy received* | *1,00,000/-* |

4,15,667/-"

35. The above ground challenges the action of the Ld.CIT(A) in reducing the following from the profits of the EOU while calculating exemption u/s 10B of the Act:

1) Loss on export of traded goods = Rs.1,61,934/-
2) Rent received from employees = Rs.1,53,733/-
3) R & D subsidy = Rs.1,00,000/-

36. Brief facts relating to the issue are that the assessee had claimed deduction u/s 10B on its EOU unit amounting to Rs.1,97,20,837/- being 90% of the profits amounting to Rs.2,18,92,041/-, attributable to the export turnover of the undertaking in proportion to the total turnover of the undertaking. The said deduction was computed after reducing both the turnover of traded goods from the total turnover and the profit/loss on export of traded goods .Since the assessee had incurred losses in the trading activity amounting to Rs.1,61,934/- the same were added to the total profits of the undertaking. Further no adjustment was made to the profits of the undertaking in respect of rent and miscellaneous income i.e. R & D subsidy. The A.O. held that the rent and miscellaneous income was to be reduced from the same. Further he also, reduced the profits by the loss incurred on export of traded goods. The CIT(A) upheld the order of the A.O.

37. Before us the Ld. counsel for assessee contended that as regards the loss on traded goods the same is not to be considered in computing the deduction u/s 10B of the Act in

view of the decision of the I.T.A.T. in the case of ACIT Vs. VMT Spinning Company Ltd. (supra). As far as the rent and R& D subsidy, it was contended that these incomes regularly arose in the course of business and had to be included in the taxable income for the impugned year. Further it was pointed out that the I.T.A.T. in the case of M/s Vardhman Textiles (supra) had held the rent received to be included in the profits for the purpose of calculating deduction u/s 80HHC of the Act. Our attention was drawn to the relevant findings at para 6.10 of the order wherein the issue was decided in favour of the assessee following the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Metalman Auto Pvt. Ltd., 366 ITR 434 and VMT Spinning Company Ltd. in ITA No.654/Chd/2005 vide order dated 317.2006.

38. We have heard the rival contentions. With regard the issue of treatment of loss/profit on export traded goods, the same has been dealt with by us in Ground No. 4(i) & (ii) above, directing exclusion of the same from the profits of the business of the assessee, at para 33 of our order above. As for rent received from employees, we find that in the case of the assessee itself for A.Y 2001-02, it was conceded by the assessee before the Tribunal that 90% of the same was to be excluded . Even otherwise ,section 10B grants deduction to profits derived by a 100% EOU from export of articles or things.Rent received even from employees, cannot be said to be derived from export of goods. As for the decision of the

jurisdictional High court relied upon by the Ld.Counsel for the assessee in the case of Metalman (supra), the issue was not in relation to rent received and therefore the same would not apply in the present case. Even R &D subsidy received, cannot be said to be derived from export of goods but is clearly on account of scheme of the government granting the subsidy. R&D subsidy also,we hold ,is not entitled to exemption u/s 10B of the Act. The issue is squarely covered by the decision of the apex court in Liberty India vs Commissioner of Income Tax(2009) 317 ITR 218,wherein it was held that incentives received on account of schemes of government cannot be said to be derived from the business activity carried out by assessees, for the purpose of grant of deduction u/s 80IB of the Act. Since section 10B is identically worded using the term "derived from exports",the interpretation given to the said term will apply in relation to exemption claimed u/s 10B of the Act also.

In view of the above we hold that loss on export traded goods,rent received and R&D subsidy received all are to be excluded for calculating deduction u/s 10B of the Act.

Ground of appeal No.4(iii) is therefore partly allowed in above terms.

39. Ground No.4(iv) raised by the assessee reads as under:

> *"(iv) That the Ld. CIT(A) has erred in law and on the facts while reducing profits of VSGM E.O.U. by proportionate Head office expenses amounting to Rs.79,60,109/- while calculating deduction u/s 10B."*

40. This ground is against the CIT(A)'s order upholding the order of the A.O. allocating head office expenses of Rs.79,60,109/- to EOU unit thus reducing the eligible profits of the undertaking for the purpose of calculation deduction u/s 10B of the Act.

41. Brief facts relating to the issue are that the assessee had incurred total head office expenses amounting to Rs.11,91,43,587/- and had not allocated any expenses to any of the units on the ground that secretarial function performed by the head office had nothing to do with the manufacturing units. The A.O. did not agree with the submissions of the assessee and held that the head office was providing service to all units and, therefore, he proportionately allocated a sum of Rs.79,60,109/- to the EOU unit, thus reducing its profits eligible for deduction u/s 10B of the Act. The CIT(A) dismissed the claim of the assessee following the order in the case of the assessee for assessment year 2002-03.

42. Before us the Ld. counsel for assessee made two fold contentions; i) that out of the total head office expenses certain expenses had already been added back in the computation of income and as such those were not liable to be allocated. The expenses referred to were as under:

1)	Charity and Donation	= Rs. 2,06,900/-
2)	Prior period expenses	= Rs.10,88,093/-
3)	Loss on sale of fixed asset	= Rs.1,66,246/-
4)	Provision for fall in value Of investment	= Rs.47,33,280/-

Total: = Rs.61,94,519/-

43. The Ld. counsel for assessee also contended that if any allocation was to be done it should be of the net expenses incurred by the assessee after reducing income earned by the head office which the Ld. counsel for assessee contended amounted to Rs.4,70,49,661/- by way of interest and other miscellaneous receipts. Reliance was placed on the decision of the I.T.A.T. in the case of Emerson Electric Company (India) Pvt. Ltd. Vs. DCIT in ITA No.4142/Mum/2015 dated 25.9.2017. It was also pointed out that in the recent decision of the I.T.A.T. in the case of sister concern i.e. M/s Vardhman Textiles (supra) the I.T.A.T. had held only net expenses to be allocated. Our attention was drawn to the relevant findings of the I.T.A.T. at pages 19 to 22 of the order.

44. The Ld. DR fairly conceded that the issue was squarely covered by the decision of the I.T.A.T. in the case of VMT Spinning Company Ltd. (supra) though he heavily relied upon the orders of the authorities below.

45. In view of the above, since admittedly the I.T.A.T. in the case of M/s Vardhman Textiles (supra) has adjudicated this issue holding that only net expenses, after reducing income earned therefrom, of the head office are to be allocated, we direct the A.O. to recompute the deduction after allocating net head office expenses only as per the directions of the I.T.A.T. in the case of M/s Vardhman Textiles (supra). We also agree with the contention of the Ld. counsel for

assessee that the expenses already added back need not be allocated again for the purpose of calculating profits of eligible units. We, therefore, direct the A.O. to verify the fact of disallowance of certain expenses suo moto by the assessee and thereafter not reallocate the same to the head office for the purpose of calculating eligible profits for deduction u/s 10B of the Act. Ground of appeal No.4(iv) is accordingly allowed.

46. Ground No.5(i)& (ii) raised by the assessee reads as under:

> *"5. (i) That the Ld. CIT(A) has erred in law and on the facts in excluding Export Turnover of units claiming exemption u/s 10B from Export Turnover of the appellant while calculating the deduction u/s 80HHC of Income Tax Act.*
>
> *(ii) Without prejudice to ground No. 5(i) above, the Ld. CIT(A) has erred in law and on facts while directing to exclude 100% of export turnover of the EOUs instead of 90% of export turnover of EOUs from the eligible export turnover for deduction u/s 80HHC of Income Tax Act."*

47. The above ground is against the action of the Ld.CIT(A) in excluding export turnover of units claiming exemption u/s 10B of the Act from the export turnover of the company while calculating deduction u/s 80HHC of the Act.

48. Briefly stated the AO found that the assessee had claimed exemption of export profits both u/s10B and 80 HHC of the Act .He held that since the said profits were exempt u/s 10B of the Act ,they did not form part of the gross total income of the assessee and were therefore not eligible for deduction u/s 80HHC of the Act. He, therefore, reduced 90% of the export turnover and total turnover of EOU unit from the export and total turnover of the company

for computing deduction u/s 80HHC of the Act. The Ld.CIT(A) rejected the claim of the assessee by referring to the orders in assessee's case for assessment years 2001-02 and 2002-03 and following the same directed that 100% of the turnover be reduced as opposed to 90% done by the AO.

49. Before us, Ld.Counsel for the assessee, relied upon the judgment of the Tribunal in the case of Mahavir Spinning Mills Ltd. in ITA No.212/2005 for assessment year 2001-02 dated 5.1.2016 holding that the turnover of 10B unit is not to be excluded for the purpose of computing deduction u/s 80HHC of the Act. Our attention was drawn to the relevant findings of the Tribunal at page 48 of the order, a copy of which was placed before us. It was also contended that this issue has also been decided by the Hon'ble High Court in favour of the assessee in the case of M/s Mahavir Spinning Mills Ltd. vs Commissioner of Income Tax, Ludhiana in ITA No.408 of 2007 dated 02-09-16, for assessment year 1998-99. Copy of the order was placed before us.

The Ld. DR, on the other hand relied upon the order of the authorities below.

50. We have heard rival contentions and also gone through various case laws referred to before us. The issue before us is whether for the purpose of computing deduction u/s 80HHC in a case where deduction u/s 10B is also being claimed, whether the export turnover and total turnover of the EOU unit would be taken into consideration or not. We have gone through the order of the Hon'ble High Court in the

case of M/s Mahavir Spinning Mills Ltd.(supra) for assessment year 1998-99 and find that the question of law before it was identical to the issue at hand whether export turnover of units exempt u/s 10B of the Act are to be included in export turnover for 80HHC purposes. The question framed reads as under:

> *"i) Whether on a true and correct interpretation of Section 80 HHC of the Income Tax Act, 1961, the Tribunal has erred in law in holding that the export turnover of the unit whose profits are exempt under section 10B of the Income Tax Act, 1961 is not to be included in the 'export turnover' for the purposes of calculating the deduction under section 80HHC of the Income Tax Act, 1961?"*

51. The Hon'ble High Court, we find, ruled in favour of the assessee holding that in view of the definition of the said term in section 80HHC, no such exclusion is provided. The relevant finding of the Hon'ble High Court at para 16 of its order is as under:

> *"16. We are, therefore, unable to agree with the decision of the Tribunal and of the CIT (Appeals) upholding the assessment order. The Tribunal held that the turnover of sales made by the assessee for which deduction under section 10B had been claimed did not answer the description of the turnover eligible for deduction under section 80HHC and therefore, the Assessing Officer rightly excluded such turnover from export turnover while computing relief available to the assessee under section 80HHC of the Act. We are unable to agree. Section 80 HHC clearly defines the terms export turnover, total turnover and profits of business. None of these definitions exclude the export turnover in respect whereof benefit has been derived under section 10B. To accept the respondent's contention would require the section to be rewritten and the expression to be redefined which is not permissible."*

In view of the same we agree with the Ld.Counsel for the assessee that export turnover for which exemption u/s 10B of the Act has already been claimed, is to be included in the turnover for purposes of calculating deduction u/s 80 HHC of the Act. Ground of appeal No.5(i)&(ii) raised by the assessee is therefore allowed.

52. Ground No.5(iii) raised by the assessee reads as under:

"5. (iii) The Ld. C1T (A) has erred in law and on facts while apportioning all the Administrative, Financial Expenses and Depreciation being expenses not relating to trading activities of appellant's business for calculating indirect cost of trading exports while calculating deduction u/s 80HHC of Income Tax Act."

53. This ground is against the action of the CIT(A) in apportioning all administrative and financial expenses and depreciation for calculating indirect cost of trading goods while calculating deduction u/s 80HHC of the Act.

54. Briefly stated, the assessee while calculating deduction u/s 80HHC of the Act had calculated the indirect cost of trading goods at Rs.90.76 lacs , by allocating common expenses which were not directly relating to manufacturing or trading units where trading was done between both the trading and manufacturing activities. The assessee submitted before the A.O. that as per Explanation-d to section 80HHC(3) direct cost meant cost directly attributable to the trading goods exported out of India and as per Explanation-(e) to the said section, indirect cost meant cost not being direct cost allocated in the ratio of turnover in respect of trading goods to the total turnover. The A.O. did not agree with the submissions of the assessee and calculated the indirect cost at Rs.244.07 lacs, by allocating all expenses of the company. The Ld.CIT(A) disposed off the appeal of the assessee with the direction to the A.O. to compute direct and indirect cost of trading cost as per findings given in the appellate order dated 25.1.2008 in the case of the assessee for assessment year 2001-02.

55. Before us the Ld. counsel for assessee contended that the appellate order followed by the Ld.CIT(A) in the case of the assessee for assessment year 2001-02 had been decided in favour of the assessee by the Tribunal vide its order in ITA No.249/2008 and ITA No.280/2008 dated 28.12.2012. It was pointed out that the I.T.A.T. after going through the facts of the case allowed the appeal for statistical purposes directing the A.O. to recompute indirect cost relating to trading goods in line with the direction given by the I.T.A.T. in the case of VMT Spinning Company Ltd. Vs. ACIT in ITA No.682/2007 for assessment year 2003-04. It was further pointed out that in the case of sister concern of the assessee i.e. M/s Vardhman Textiles (supra), identical issue had been dealt with by the I.T.A.T. in its recent order dated 4.5.2018, wherein the order of the CIT(A) had been upheld, setting aside the issue for reworking the indirect cost of trading goods in accordance with the decision of the Special Bench of the I.T.A.T. in the case of Surendra Engineering Corporation Vs. ACIT, 86 ITD 121 (SB) (Mum).

56. Ld.DR ,on the other hand, relied on the order of the lower authorities.

57. We find that this issue already stands decided by the ITAT in the case of the VMT Spinning Co. Ltd. , for A.Y 2003-04,in ITA no.682/chd/07 dt.13.07.2012, wherein each item of expenditure headwise was taken into consideration for allocation to traded goods. The directions given in the said decision was by the ITAT in the case of the assessee for A.Y

2001-02 in ITA No.249 & 280/chd/08 dt.28-12-12. We accordingly direct the assessing officer to recompute the indirect cost relatable to traded goods in line with the directions given in para 18-25 of the order of the ITAT in the case of VMT Spinning(supra) for A.Y 2003-04 dt.13-07-12. Ground of appeal No.5(iii) is therefore allowed for statistical purposes.

58. Ground No.5(iv) raised by the assessee reads as under:

> *"5. (iv) That the Ld. CIT(A) has erred in law and on the facts while reducing profits of business eligible for deduction u/s 80HHC by 90% of interest received from suppliers and customers amounting to Rs.3,45,75,013/-"*

59. This ground is against the action of the CIT(A)in reducing the profits of the business eligible for deduction u/s 80HHC by 90% of interest received from suppliers and customers amounting to Rs.3,45,75,013/-. The AO had reduced 100% of the said interest. The CIT(A) held that the interest from customers/suppliers was in the nature of business income but 90% of the same should be deducted from the profits of the business for computing deduction u/s 80HHC of the Act.

60. Before us, the Ld. counsel for assessee contended that the interest from customers and suppliers being in the nature of business income there is no reason for deducting 90% of the same from the profits of the company for the purpose of calculating deduction u/s 80HHC of the Act. Reliance was placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of Phatela Cotgin Industries

P. Ltd. Vs. CIT (2007) 303 ITR 411 (P&H) for the proposition that the interest from customers was eligible for deduction u/s 80HHC/80IA of the Act. It was further contended that in any case, the interest income to be reduced should be that after netting the interest expenses incurred and in this regard reliance was placed on the decision of the High Court in the case of M/s ACG Associated Capsules Pvt. Ltd. (supra) and the decision of the ITAT Chandigarh Bench in the case of ACIT Vs. Mahavir Spinning Mills Ltd. in ITA No.212/2015 for assessment year 2001-02 dated 5.1.2016. It was also pointed out that in the case of sister concern of the assessee i.e. M/s Vardhman Textiles (supra) the I.T.A.T. in a recent decision had held that 90% of such interest earned from customers and suppliers need not be reduced for the purpose of calculating deduction u/s 80HHC of the Act. Our attention was drawn to the relevant findings at pages 11 to 13 of the order.

61. Ld.DR relied on the order of the authorities below.

62. We have heard the rival contentions. The Hon'ble apex court in the case of ACG Capsules (supra) has laid down the law that only net interest earned ,excluding interest paid in relation to the same, is to be considered for the purpose of exclusion from the profits for calculating deduction u/s 80HHC of the Act. Following the same, we restore this issue to the AO to determine the net interest earned ,as per the ratio laid down in the case of ACG Capsules(supra) and thereafter decide the issue in accordance with law. This

ground of appeal No.5(iv) is therefore allowed for statistical purposes.

63. Ground No.5(v) raised by the assessee reads as under:

> *"5. (v) That the Ld. CIT(A) has erred in law and on the facts while reducing 90% of rent received from employees amounting to Rs.23,68,054/- from profits of business eligible for deduction u/s 80HHC."*

64. This ground is against the action of the CIT(A) in reducing 90% of the rent received from the employees amounting to Rs.23,68,054/- while computing profits of the business eligible for deduction u/s 80HHC of the Act. The CIT(A) decided the issue against the assessee following his own order for assessment year 2001-02.

65. Before us the Ld. counsel for assessee contended that the rent income received was in the nature of business income and, therefore, 90% of the same need not be reduced. It was pointed out that in the case of sister concern of the assessee, Vardhman Textiles (supra), the rental income shown as part of miscellaneous income was held by the ITAT not be reduced to the extent of 90% of the same from the profits of the business. Our attention was drawn to the relevant findings of the IATA at page 11-13 of the order.

66. We have both the parties. We find that identical issue has been dealt with by us in the context of exclusion of rent received for the purposes of calculating deduction/exemption u/s 10B of the Act in ground no.4(iii) raised by the assessee. Since section 10B and 80 HHC are para materia, allowing deduction/exemption of profits derived from exports, our

decision rendered in the context of section 10B of the Act, at para 38 of our order above will apply for purposes of section 80HHC also, following which, we dismiss this ground raised by the assessee.

67. Ground No.5(vi) raised by the assessee reads as under:

> *"5. (vi) That the Ld. CIT(A) has erred in law and on the facts while not allowing deduction u/s 80HHC (3)(c)(iii) on export incentives amounting to Rs.4,85,35,947/-."*

68. This ground is against the action of the CIT(A) in not allowing deduction u/s 80HHC(3)(c)(iii) on export incentives being DEPB of Rs.4,85,35,947/-.

69. Briefly stated, the assessee had earned premium on transfer of sale of licences, REP/DEPB (Rs.53.34 lacs premium on DEPB) and claimed deduction u/s 80HHC(3) as per auditor's certificate. The A.O. while computing deduction u/s 80HHC reduced the gross sale proceeds of DEPB of Rs.4,85,35,947/- and denied the benefit of deduction on the basis of the provisions of section 80HHC(3) as the export turnover of the company existed Rs.10 crores. The CIT(A) following his own order for assessment year 2001-02 dismissed the claim of the assessee.

70. Before us the Ld. counsel for assessee contended that the proviso to section 80HHC(3) had been struck down and as such the assessee was entitled to deduction u/s 80HHC on premium on sale of DEPB /REP licences. Reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of Avani Exports Vs. CIT (2012) 348 ITR 349. The

Hon'ble Jurisdictional High Court in the case of Guru Nanak Exports, Phagwara Vs. ACIT Jalandhar (2012) CWP NO.11328 of 2009 and Vijay Silk House (Bangalore) Ltd Vs. UOI, WP No.2446/2010 (Bombay High Court). It was also pointed out that in the case of sister concern i.e. M/s Vardhman Textiles (supra) the I.T.A.T. had allowed the claim of the assessee agreeing that the proviso had been held to be ultra vires. Our attention was drawn to the findings of the I.T.A.T. in the said case at pages 34 to 35 as under:-

> *"17.1 The Assessing Officer has not allowed deduction under section 80HHC(3)(c)(iii) on export incentives. The assessee submitted before the Ld.. CIT(A) that this amendment is not applicable as company adoption to choose duty drawback or DEPB being duty remission scheme. He argued that the Assessing Officer had reduced total DEPB amounting to Rs.4.10 Crores instead of losses from transfer of DEPB amounting to Rs.12.34 Crores from export incentives while calculating deduction under proviso to Section 80HHCJ3). He further argued that amendment relating to export incentives is not applicable and DEPB of Rs.4.10 Crores included duty drawback of Rs.36.15 Lacs on which no restriction to allow deduction under section 80HHC have been laid in taxation provisions.*
>
> *17.2 Ld. CIT(A) has confirmed the addition based on the earlier order in the assessees own case, relying on the decision of Hon'ble jurisdictional High Court in the case of Liberty India Ltd. (supra).*
>
> *17.3 Before us the assessee brought to our notice the order of Hon'ble jurisdictional High Court in the case of Guru Nanak Exports in C.W.P No. 11328 of 2009 dt. 03/10/2012 wherein the amendment brought with retrospective effect has been held ultra-vires with regard to the retrospective nature of the amendment.*
>
> *17.4 Since the amendment is not applicable to the case of the assessee before us this ground of appeal f the assessee is hereby allowed."*

71. Ld.DR relied on the order of the authorities below.

72. Having heard the rival contentions. We are in agreement with the Ld.Counsel for the assessee that the third proviso to section 80HHC(3), applying which the assessees claim of deduction u/s 80HHC on sale of DEPB was denied, was brought on the statute by theTtaxation Amendment Act, 2005 and its retrospectivity from

01.04.1998, was categorically struck down by courts in the judgements relied upon by the Ld.Counsel for the assessee. Since the impugned year falls before 2005, the third proviso is not applicable to the assessee. The denial of deduction u/s 80HHC of the Act on sale of DEPB is therefore set aside. This ground of appeal of the aseessee is therefore allowed.

73. The assessee has taken the following additional ground before us which reads as under:

> *" That the authorities below have erred in treating the interest reimbursement of Rs.8,32,78,691/- under Technology Upgradation Fund Scheme (FUFS) as revenue receipts instead of capital receipt."*

74. The assessee has contended that it is a purely legal ground which may be admitted for adjudication. Agreeing with the contention of Ld. counsel for assessee and following the judgment of the Hon'ble Supreme Court in the case of NTPC Vs. CIT 299 ITR 383, the additional ground raised by the assessee is being admitted for adjudication being a purely legal ground.

75. Before us the Ld. counsel for assessee pointed out the facts relating to the issue stating that the assessee had paid interest to the bank amounting to Rs.24,55,51,691/- on term loans raised by it and said interest was debited in the Profit & Loss Account of the assessee company. As per the TUF Scheme of the Government the assessee had received subsidy of Rs.8,32,78,691/- which was credited in the Profit & Loss Account and accordingly taxed. It is this TUFS subsidy of Rs.8.32 crores, the Ld. counsel for assessee

pointed out that the assessee is claiming as capital receipt. The Ld. counsel for assessee contended that this issue of treatment of interest subsidy under TUF Scheme has been dealt with in a number of decisions holding the same to be capital in nature. Our attention was drawn to the following case laws in this regard:

1) CIT Vs. Shamlal Bansal, ITA No.472/2010 ` dated 17.1.2011 (P&H).

2) M/s CNV Textiles Pvt. Ltd. Vs. DCIT, ITA No.746/Mad/2014, dated 21.11.2014.

3) DCIT Vs. M/s Gloster Jute Mills Ltd., ITA No.687/Kol/2010, dated 2.7.2014.

4) DCIT Vs. Satluj Textiles & Industries Ltd., ITA No.5142/Del/2013, dated 3.7.2015.

Copies of the above orders were also placed before us.

76. The Ld. counsel for assessee also contended that this issue arose in the case of the sister concern of the assessee M/s Vardhman Textiles (supra) where the matter had been restored to the CIT(A) to adjudicate the same. It was pointed out that in the said case also this issue had been raised as an additional and since it has not been considered by the authorities below it was remanded to the CIT(A). Our attention was drawn to para 23.5 of the order holding so.

77. The Ld. DR also contended that since the aforesaid ground had not been there before the CIT(A) an opportunity to be provided to the Revenue to deal with entire gamat of the issue.

78. In view of the above, we restore the issue of treatment of subsidy received of interest under TUF Scheme back to the CIT(A) for adjudicating afresh directing him to pass a speaking order in this regard after considering all the facts relating to the scheme and the judicial precedent in this regard. The assessee would be at liberty to make submissions as deemed fit before the CIT(A). Thus additional ground of appeal is, therefore, allowed for statistical purposes.

79. In effect the appeal of the assessee is partly allowed for statistical purposes.

80. We shall now take up the appeal of the Revenue in ITA No.118/Chd/2009.

ITA No.118/Chd/2009(Revenue's Appeal):

81. Ground No.1 raised by the Revenue reads as under:

> *"1. That the Ld. CIT(A)-II has erred in law & facts in deleting the addition of Rs.44,96,028/- made u/s 14A by the A.O. on proportionate basis out of personnel, administrative and misc. expenses for earning of dividend income."*

82. The above ground relates to the issue of attributing expenses to dividend income earned by the assessee which the A.O. had attributed to the extent of Rs.44.96 lacs. The CIT(A) had reduced the same to Rs.1 lac. This issue has been dealt with by us in ground No.2 raised by the assessee in its appeal as above wherein we have upheld the restriction of attribution of expenses to the extent of Rs.1 lac at para 19of our order above. The ground of appeal No.1 raised by the

Revenue, therefore, stands adjudicated as above and thus dismissed.

83. Ground No.2 raised by the Revenue reads as under:

> *"2. Ld. CIT(A) has erred in law & facts in directing the A.O. to consider interest income received by the assessee on delayed payment from customers as "business income" instead of "Income of other sources" as considered by the A.O."*

84. The Revenue interest he above ground has challenged the action of the Ld.CIT(A) in treating the interest received by the assessee on delayed payments from customers as business income instead of income from other sources as held by the A.O. The CIT(A) had held the said interest income to be in the nature of business income of the assessee following his order in the case of the assessee for assessment year 2002-03 wherein the decision of the Hon'ble Jurisdictional High Court in the case of Phatela Cotgin Industries P. Ltd. Vs. CIT, 167 Taxman 9 had been followed. The Ld. DR was unable to bring to our notice any contrary decision in this regard. In view of the same, we do not find any reason to interfere in the order of the CIT(A) holding the interest income earned from delayed payments from customers etc. as business income. Ground of appeal No.2 raised by the Revenue is, therefore, dismissed.

85. Ground No.3 raised by the Revenue reads as under:

> *"3. That the Id. CIT(A) has erred in law & facts in allowing deduction u/s 10B on sale of sample forming part of misc. income which have no nexus with the profits derived from the undertaking claiming exemption u/s 10B."*

86. The issue raised in the above ground relates to the direction of the Ld.CIT(A) allowing deduction u/s 10B on sale of samples which form part of miscellaneous income. The A.O. had held that since it had no nexus with the profits derived from the undertaking, the assessee was not eligible to claimed deduction u/s 10B of the Act on the same. The Ld.CIT(A), on the other hand, held that this income from sale of samples had to be taken as income derived from 100% EOU since the samples sold were manufactured by the EOU only. The Ld. DR was unable to controvert this finding of the Ld.CIT(A) before us. On the contrary, it was pointed out to us that in the case of Vardhman Threads Ltd. Vs. ACIT, the I.T.A.T. in this order passed in ITA No.556/Chd/2008 dated 28.4.2014 had held that the sale of samples was related to normal business of the assessee entitling it to deduction u/s 80IB of the Act. In view of the above, there is no doubt, therefore, that the CIT(A) had rightly held the assessee to be eligible for deduction on sale of samples u/s 10B of the Act. Ground of appeal No.3 raised by the Revenue is, therefore, dismissed.

87. Ground of appeal No.4 raised by the Revenue reads as under:

> *"4. That the Ld. CIT(A) has erred in law by directing the A.O. for fresh adjudication/ verification of direct and indirect cost attributable to trading of export goods as per provisions of section 80HHC of I.T.Act. 1961, whereas the same was calculated as per data supplied by the assessee."*

88. The above ground challenges the action of the CIT(A) directing fresh adjudication/verification of the direct or

indirect cost attributable to the trading on export goods fpp of calculating the eligible deduction of the assessee u/s 80HHC of the Act. The Ld. DR pointed out that this ground of appeal was common to that raised by the assessee in it is appeal in ITA No.88/Chd/2009 above in ground No.5.(iii). Since the issue has been adjudicated by us in the case of the assessee at para 55 of the order above upholding the order of the CIT(A), the ground of appeal No.4 raised b the Revenue stands covered by our decision as above. In view of the same, ground No.4 raised by the Revenue is dismissed.

89. Ground No.5 raised by the Revenue reads as under:

> *"5. That the Ld. C1T(A) has erred in law & facts in directing the A.O. to treat the interest received from customers and suppliers to be the income eligible for deduction u/s 10B."*

90. In the above ground the Revenue has challenged the action of the Ld.CIT(A) in treating the interest receipts from customers and suppliers as being eligible for deduction u/s 10B of the Act. The Ld. DR in this regard relied upon the order of the A.O. but at the same time pointed out that the Hon'ble Jurisdictional High Court in the case of Phatela Cotgin Industries P. Ltd. Vs. CIT, 303 ITR 411 had categorically held that the interest from customers/suppliers was entitled to deduction u/s 80HH and 80I of the Act. In view of the above, we find no reason to interfere in the order of the Ld.CIT(A) and ground raised by the Revenue, therefore, is dismissed.

91. Ground No.6 raised by the Revenue is as under:

> *"6. That the Id. CIT(A) has erred in law & facts in allowing deduction u/s 80HHC(3)(c)(i) on adjusted profit of business after increasing the same with the loss on trading goods exported amounting to Rs.1,45.02.286/- and directed the A.O. to calculate deduction u/s 80HHC(3)(c)(i) accordingly."*

92. The above ground raised by the Revenue is against the direction of the Ld.CIT(A) allowing deduction u/s 80HHC of the Act on the adjusted profits of the business after adjusting loss on sale of traded exports as against the order passed by the A.O. without making such adjustment. This issue has risen in the case of the assessee's appeal also in ground No.4.(iii) wherein we have held that both the profit/loss on the export of trading goods and the turnover of export trading goods need to be adjusted for the purpose of calculating/determining the eligible deduction u/s 10B of the Act at para 38 of our order above. Following the same we uphold the order of the Ld.CIT(A) in allowing the adjustment of loss on export of trading goods for the purpose of calculating deduction u/s 10B of the Act. Ground of appeal No.6 raised by the Revenue is, therefore, dismissed.

93. Ground of appeal No.7 raised by the Revenue reads as under:

> *"7. That the Id. CTT(A) has erred in law & facts in allowing the deduction u/s 80IB in case of Aurodying Mills as the unit is not doing manufacturing activities."*

94. In the above ground the Revenue has challenged the action of the Ld.CIT(A) in granting deduction u/s 80IB of the Act to Auro Dying Mills of the assessee. The A.O., it was pointed out, had denied the said holding that the unit was not undertaking any manufacturing activities. The Ld.CIT(A), on the other hand, had allowed the claim of the assessee on

finding that identical issue had arisen in the case of the assessee in assessment year 2002-03 wherein the same was allowed in first appeal vide order dated 29.4.2008.

95. The Ld. DR before us relied upon the order of the A.O. but was unable to controvert the finding of the Ld.CIT(A) that the issue had been decided in favour of the assessee in the preceding assessment year. Nor did the Ld.DR bring to our notice any order of higher authorities reversing the CIT(A) 's order on this issue for the preceding year. In view of the same, we do not find any reason to interfere in the order of the CIT(A) holding that Auro Dying Mills was eligible for deduction u/s 80IB of the Act. In view of the above, ground No.7 raised by the Revenue is dismissed.

96. Ground No.8 raised by the Revenue reads as under:

> *"8. That the Id. CIT(A) has erred in law & facts in allowing 100%) deduction u/s 80HHC instead of 90% as available for the year under consideration in computing book profit of the assessee u/s 11 5JB."*

97. The Revenue has challenged the action of the Ld.CIT(A) in allowing 100% deduction u/s 80HHC of the Act for the purpose of computing book profits u/s 115JB of the Act as against 90% of the profits allowed by the A.O.

98. Before us the Ld. DR conceded that this issue was covered in favour of the assessee by the order of the I.T.A.T. in the case of the assessee itself for assessment year 2001-02 in ITA No.249/Chd/2008 dated 28.12.2012 wherein at para 55 the I.T.A.T. had noted that the Ld. DR had conceded

that the issue stood covered in favour of the assessee in the case of Ajanta Pharma Ltd. Vs. CIT, 327 ITR 305.

99. In view of the above, we do not find any reason to interfere in the order of the Ld.CIT(A) in allowing deduction of 100% of eligible deduction u/s 80HHC of the Act for the purpose of calculation of book profits u/s 115JB of the Act. Ground of appeal No.8 raised by the Revenue is, therefore, dismissed.

100. The appeal of the Revenue is therefore dismissed

101. In effect, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-	Sd/-
संजय गर्ग	**अन्नपूर्णा गुप्ता**
(SANJAY GARG)	**ANNAPURNA GUPTA)**
न्यायकि सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

दिनांक /Dated: 26th November, 2018

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar