

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2488/DEL/2010 [A.Y. 2003-04]

M/s MMTTC Ltd
1st Core, Scope Complex
Institutional Area
Lodhi Road, New Delhi

Vs.

The Dy. C.I.T
Circle - 5(1)
New Delhi

PAN: AAACM 1433 E

ITA No. 3290/DEL/2010 [A.Y. 2003-04]

The A C.I.T
Circle 5(1)
New Delhi

Vs.

M/s MMTTC Ltd
1st Core, Scope Complex
Institutional Area
Lodhi Road, New Delhi

PAN: AAACM 1433 E

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv
Shri Tavish Verma, CA

Department By : Shri Subhra Jyoti Chakraborty, CIR-DR

Date of Hearing : 24.01.2024
Date of Pronouncement : 30.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned cross appeals by the assessee and the Revenue are preferred against the order of the Id. CIT(A) - VII, New Delhi dated 28.04.2010 pertaining to Assessment Year 2003-04.

2. Since the underlying facts are common in the cross appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The grievances of the assessee read as under:

"1. That on the facts and circumstances of the case and in law, the order dt. 28.04.2010 passed by the Id. CIT(A)-VIII is bad in law.

2. That the Id. CJT(A)- VIII erred in law in not adjudicating the Ground of Appeal relating to allowability of 80IIIIC from Gross Total Income

3. That the Id. CJT(A)- VIII erred on facts and in law in upholding the action of the AO in treating the accrued interest income of Rs. 1,99,89,000/- and Rs. 96,62 pursuant to arbitration award, as income of the assessee.

4. The Id. CIT(A) -VIII erred on facts and in law in not adjudicating the nature of alleged accrued interest income of Rs. 1,99,89,000/- and Rs. 96,62,250/- as Business Income.

5. That the assessee craves leave to add, alter, modify, amend, delete, substitute any Ground of Appeal at any time before the disposal of this appeal."

4. At the very outset, the Id. counsel for the assessee drew our attention to the decision of this Tribunal in assessee's own case in ITA No. 1722/DEL/2006 and pointed out that the coordinate bench has decided the issue vide Ground No. 2 of the present appeal.

5. Though the Id. DR, in his written submissions pointed out certain facts read with some judicial decisions, but could not point out any distinguishing facts.

6. We have carefully considered the orders of the authorities below. We find force in the contention of the Id. counsel for the assessee. The impugned issue was considered by the co-ordinate bench in ITA No. 1722/DEL/2006. The relevant findings read as under:

"25. In regard to ground no. 4 to 6, on behalf of the assessee the Ld Counsel submitted that as assessee is the merchant and also exporter of manufactured goods. The deductions have to be allowed with the strait jacket formula prescribed in sub section (3) of section 80HHC. It was submitted that the Assessing Officer has fallen in error while holding the deduction u/s 80HHC of the Act is to be restricted to business income forming part of the gross total income and therefore assessee is not entitled to deduction u/s 80HHC. It was submitted that as per sub section (1) of section 80HHC of the Act an exporter is entitled to deduction in respect of profits derived from export and in case of an exporter like present assessee who is engaged in both export of trading goods i.e. goods other than, one manufactured by the assessee and also goods manufactured by the assessee, then the profits derived from export which formed the basis for deduction under the said section is computed in accordance with formula prescribed in sub-section (3) of sub section 80HHC of the Act. It was submitted that Chapter VI-A of the Act deals with deduction to be made in computing total income. According to section 80A of the Act, in computing the total income of assessee deductions specified in section 80C to 80U are allowed from gross total income. It was submitted that the only limitation contained in sub section 2 of section 80A is that the aggregate deduction under Chapter VI-A of the Act cannot exceed the gross total income which is defined in section 80B(5). It was submitted that the aforesaid interpretation establishes that first the gross total income has to be computed and thereafter deductions if any under Chapter VI-A of the Act have to be made. It was submitted that in the case of assessee the profit eligible for deduction u/s 80HHC of the Act is the profit which stood

included in the gross total income and because of loss suffered in other business and exclusion of interest and dividend income, the overall computation under the head "profit and gains of business or profession" was arrived at a negative figure by the Assessing officer. It was submitted that it is incorrect to say that the profits from export of goods did not form part of gross total income to deny deduction u/s 80HHC of the Act in respect thereof. It was submitted that in assessee's own case for assessment year 2001-02 relying IPCA Laboratories Ltd. case the Tribunal has held that since business income of assessee was negative after excluding interest, dividend and miscellaneous income, no deduction was allowable under that section. Ld. Counsel submitted that the aforesaid decision for assessment year 2001-02 is challenged and pending before Hon'ble High Court. It was submitted that in IPCA case issue involved was regarding computation of deduction u/s 80HHC (3)(c) of the Act and the issue regarding allowance of deduction was not subject matter of the dispute. It was submitted that in the present case the issue pertains to the question of set off of deduction computed in terms of section 80HHC (3)(c) of the Act in arriving as the total income. Ld. Counsel relied for judgment of Hon'ble Supreme Court of India in CIT vs. Williamson Financial Services 297 ITR 17 and Bombay High Court in V. M. Salgaonkar Sales International vs. ACIT : 281 CTR 191.

26. Ld. Counsel relied judgment of Hon'ble Supreme Court of India in Commissioner of Income Tax v. Reliance Energy Ltd (2021) 127 taxmann.com 69 to draw an analogy, where in regard to section 80IA it is held that the scope of sub section 5 of section 80IA is limited to determination of quantum of deduction under sub section (1) of

section IA by treating 'eligible business' as 'only source of income' and sub section 5 cannot be pressed into service for reading a limitation of deduction under sub-section (1) only to business income.

27. Ld DR however endorsed the findings of Ld Tax authorities below. It was submitted that in assessee's own case relying IPCA Case, findings have been given against the assessee and matter is pending before Hon'ble High Court.

28. In regard to these grounds it can be observed that the assessee had reported profit of the business at R 2,47,088,375/- while profits from export of trading goods at 33,78,35,239/-. The Gross Total Income (Revised) was submitted at Rs. 19,13,55,170 and the Id AO arrived at Business income of (-) 913479702/- after reducing the interest income and dividend and in alternative the adjusted business profit is calculated at (-)Rs. 313591737/ after reducing the interest income and 90% of other income including dividend income.

29. Now, in regard to manner of treating interest income of assessee the issue has been restored to the files of Ld AO. Therefore, the effect giving order has to be passed by the Id AO and the Business income has to be re-calculated. Similarly on determination of ground no 3 as above and also the interest income issue as determined by previous orders, the 'Adjusted business profit' has to be recalculated. Therefore, by merely relying the decision of Hon'ble Supreme Court in IPCA Laboratories Ltd. Case, the 80HHC deduction can not be declined as adjusted business profit has to be recomputed and may not be in minus. 29.1 At the same time in regard to the applicability of

Section 80AB for not allowing deduction u/s 80HHC, as AO arrived at net loss from the profit and gains of business and profession, the judgement of Hon'ble Supreme Court in the case of Commissioner of Income Tax-1 versus Reliance Energy Ltd. [2021]127 taxmann.com69 (SC) now hold the key where Hon'ble apex Court has held; 9. The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of 'business income' only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the 5 (1986) 3 SCC 538 6 [2010] 328 ITR 448 (Bombay) 9 | Page extent of 'gross total income' was rejected by the Assessing Officer. It is relevant to reproduce Section 80AB of the Act which is as follows: "80AB. Deductions to be made with reference to the income included in the gross total income. — Where any deduction is required to be made or allowed under any section included in this Chapter under the heading "C. — Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income." As stated above, Section 80AB was inserted in the year 1981 to get over a judgment of this Court in Cloth Traders (P) Ltd. (supra). The Circular dated 22.09.1980 issued by the CBDT makes it clear that the reason for introduction of Section 80AB of the Act was for the deductions under Part C of Chapter VI-A of the Act to be

made on the net income of the eligible business and not on the total profits from the eligible business. A plain reading of Section 80AB of the Act shows that the provision pertains to determination of the quantum of deductible income in the 'gross total income'. Section 80AB cannot be read to be curtailing the width of Section 80-IA. It is relevant to take note of Section 80A(1) which stipulates that in computation of the 'total income' of an assessee, deductions specified in Section 80C to Section 80U of the Act shall be allowed from his 'gross total income'. Sub-section (2) of Section 80A of the Act provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the 'gross total income' of the Assessee. We are in agreement with the Appellate Authority that Section 80AB of the Act which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of 'net income'. 30. Therefore, these grounds no 4 to 6 are allowed for statistical purpose while directing the Ld. AO to recompute the deduction u/s 80HHC, while giving effect to the judgment of Hon'ble Supreme court in Commissioner of Income Tax-1 versus Reliance Energy Ltd.(Supra)."

7. We find that vide order dated 22.12.2017, framed u/s 254/143(3) of the Act, the Assessing Officer has given the appeal effect as under:

31. The ITAT has set aside this issue to segregate the interest earned in each category. It has stated that the Assessing Officer shall allow the interest earned from the funds deployed as advance received from customers, security deposits from customers, credit/ loan from bank/ financial institutions as business income.

Particulars	Amt (Rs in Crores)	ITAT Decision
Advances received from Customers	15.55	Business Income
Average Daily Sales Consideration		
Security Deposit from Customers		
Repayment of loans/ advances given to employees	2.05	Pending in High Court
Transfer of assets/ investments	Nil	Other Sources
Credit/ loan from Bank/ financial institutions etc	27.72	<u>Business Income</u>

32. Regarding interest earned from the repayment of loans/ advances given to employees of Rs 2.05 crores, the appeal of the Assessee is pending currently before the Hon'ble Delhi High Court. On receipt of the order of the Hon'ble Delhi High Court effect will be given to the findings in the same.

33. Necessary modification to this order will have to be made to give effect to the order of the Hon'ble Delhi High Court when it is received.

34. In view of the above, income from other sources of Rs 5,34,58,782 was determined as follows:

- | | |
|--|----------------|
| a. Interest from Income Tax Dept | Rs 3,29,70,000 |
| b. Interest on advances to staff/employees | Rs 2,04,88,782 |

8. Thus, the apprehension of the ld. DR raised in his written submissions has been taken care of by the Assessing Officer while giving appeal effect to the order of the Tribunal. Therefore, respectfully following the decision of this co-ordinate bench [supra], we order accordingly.

9. Ground Nos. 3 and 4 involve two parties:

(i) M/s K.J. International - Rs. 1,99,89,000/-

(ii) M/s Surya Agroil - 96,62,250/-

10. The underlying facts are that the assessee entered into an agreement with M/s K.J. International [KJI] on 01.01.1993 for procurement of paddy. In terms of the agreement, KJI procured paddy on behalf of MMTC for which advance payments were released to them. Subsequently, KJI committed breach of contract and misappropriated stocks lying with them and dispute arose between the assessee and KJI.

11. Arbitration proceedings were initiated. Arbitration award was received on 30.05.2002 by which Rs. 4.12 crores was awarded in favour of the assessee being principal amount of Rs. 2,14,96,329/- and interest of Rs. 1,98,88,327/-.

12. When the assessee did not receive the award, it filed execution proceedings before the Hon'ble High Court of Delhi. But, due to lack of collateral security, could not get favourable order for execution of

arbitral award. However, subsequent to newspaper advertisement for sale of property by KJI, the assessee approached the court for execution proceedings and obtained favourable orders for attachment.

13. When the properties of KJI were attached, it approached the Disputes Settlement Committee for amicable settlement. On 13.03.2008, ultimately, a Memorandum of Settlement was signed and the assessee received post dated cheques of Rs. 2.75 crores upfront, which was adjusted against the advance recoverable. But the post dated cheques could not get encashed. However, as and when the cheques got encashed, the assessee offered the same in its income in the subsequent years which is evident from the following chart:

Details of payment received from M/s KJ International after Dispute Settlement Commission Proceedings in June, 2008 vis-à-vis Arbitration Award

<u>S. No. / Annexure No.</u>	<u>Date of Receipt</u>	<u>Amount Received</u>	<u>Balance Receivable as per books</u>	<u>Interest Income Booked in Accounts</u>	<u>Income booked in F.Y.</u>	<u>Remarks</u>
Balance already lying in Advance recoverable since agreement closure			31,120,936			
Less: Receipt after DSC Proceedings						
1	11-06-08	27,500,000	3,620,936	3,229,064	2008-09	Income booked through separate voucher. Refer Attachmen no. 20A
2	16-01-09	45,000	3,575,936			
3	16-01-09	10,000	3,565,936			
4	16-01-09	49,500	3,516,436			
5	16-01-09	49,745	3,466,691			
6	16-01-09	49,500	3,417,191			
7	16-01-09	200,000	3,217,191			
8	16-01-09	200,000	3,017,191			
9	16-01-09	49,500	2,967,691			
10	16-01-09	2,726,755	240,936			
11	21-01-09	45,000	195,936			
12	27-04-09	200,000	(4,064)			
13	18-05-09	500,000	(504,064)			
14	21-05-09	500,000	(1,004,064)			
15	28-05-09	350,000	(1,354,064)			
16	29-05-09	350,000	(1,704,064)			
17	29-05-09	150,000	(1,854,064)			
18	29-05-09	875,000	(2,729,064)			
19	29-05-09	300,000	(3,029,064)			
20	30-05-09	200,000	(3,229,064)			
21	28-07-09	100,000	(3,329,064)	3,525,000	2009-10	Directly booked in income
22	20-08-09	1,300,000	(4,629,064)			
23	27-10-09	200,000	(4,829,064)			
24	30-10-09	200,000	(5,029,064)			
25	03-11-09	300,000	(5,329,064)			
26	03-11-09	500,000	(5,829,064)			
27	05-11-09	600,000	(6,429,064)			
28	06-11-09	225,000	(6,654,064)			
29	04-02-10	100,000	(6,754,064)			
30	25-05-10	100,000	(6,854,064)	3,325,000	2010-11	Directly booked in income
31	18-03-11	25,000	(6,879,064)			
32	18-03-11	3,200,000	(10,079,064)	6,150,000	2011-12	Directly booked in
33	13-04-11	6,000,000	(16,079,064)			
34	13-04-11	150,000	(16,229,064)			
Total		47,350,000		16,229,064		

14. On the above facts, it would be pertinent to refer to the Accounting Standard - AS-9 on Revenue recognition issued by the ICAI wherein effect of uncertainty on revenue recognition is provided :

"Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim eg. For escalation of price, export incentives, interest, etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize the revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by installments."

15. The aforementioned legal battle shows the uncertainty of recovering the interest amount and also the principal.

16. The Hon'ble Supreme Court in the case of Shoorji Vallabhji 46 ITR 144 and in the case of Godara Electricity 225 ITR 746 has laid down the ratio that the substance of the matter is the income which has to be recognized as per the system of accounting followed by the assessee in view of section 145 of the Act if the income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income, which does not materialize.

17. The Hon'ble Supreme Court in the case of Godara Electricity [supra] has further laid down as under:

“The question whether real accrual of income to the assessee-company in respect of those enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realization in a realistic manner.”

18. Similarly, in the case of Surya Agroil [supra] certain dispute arose and the dispute was referred to the Arbitration Tribunal and the Tribunal passed order in favour of the assessee for Rs. 99,11,170/-.

19. The award was challenged by Surya Agroil in the Hon'ble Delhi High Court, which was dismissed.

20. The factory site of Surya Agroils was locked and the factory land of Surya Agroils was taken on lease from Udyogic Vikas Ltd. Addition has been made on accrual basis similar to that of KJI. As mentioned elsewhere, the fact of uncertainty has to be considered while recognizing the revenue and in our considered opinion, considering the peculiar facts of the case of uncertainty and keeping in mind the decision of the Hon'ble Supreme Court [supra], we do not find any merit in recognizing the revenue for the year under consideration since in the case of KJI, the assessee has subsequently recognized the revenue as and when it received as mentioned in the chart elsewhere.

21. No addition is called for during the year under consideration and in so far as Surya Agroil is concerned, there is not even an iota of chance to recover the arbitral award. No addition is called for. Ground Nos. 3 and 4 taken together are allowed.

Revenue's appeal

21. Grievance of the Revenue read as under:

“1. The order of the Id. CIT(A) is erroneous and contrary to facts and law.

2. On the facts and circumstances of the case and in law the Id. C [I'() has erred in directing the Assessing Officer to treat interest income of Rs. 16,62,45,832/-- a business income as against the income from Other sources treated by the Assessing Officer and in directing the AO to include this income for the purpose of' calculating deduction u s 80 HHC.

2.1. The Ld. CIT (A) ignored the fact that each year is unique in it elf' and the interest income earned is not the income earned by the assessee from its regular business activities. Hence is not qualified fur deduction u/s 80 HHC.

3. The appellant craves leave to add, to alter, or amend any ground of the appeal raised about at the time of the hearing.”

23. The impugned issue has been considered at length in the appeal of the assessee [supra]. For our detailed discussion therein, appeal of the Revenue is dismissed.

24. In the result, the appeal of the assessee in ITA No. 2488/DEL/2010 is partly allowed for statistical purposes whereas the appeal of the Revenue in ITA Nos. 3290/DEL/2010 is dismissed.

The order is pronounced in the open court on 30.01.2024 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 30th JANUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	