

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2217/MUM/2011
(Assessment Year: 2000-2001)**

Assistant Commissioner of Income Tax 18(2), Mumbai

Room No.115, 1st Floor,
Piramal Chambers, Parel,
Mumbai – 400012, Maharashtra.

..... **Appellant**

Vs

M/s. Metropolitan Trading Company

10/76, Dainik Shivner Road, Worli
Mumbai – 400018. Maharashtra.
[PAN:AAAFM1474C]

..... **Respondent**

Appearance

For the Respondent/Department : Ms. Kaveeta Punit Kaushik
For the Appellant/Assessee : None

Date

Conclusion of hearing : 24.09.2024
Pronouncement of order : 28.11.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 10/12/2010, passed by the Commissioner of Income Tax (Appeals)-29, Mumbai, [hereinafter referred to as 'the **CIT(A)**'] under Section 143(3) read with Section 147 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 29/12/2008, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2000-01.
2. The Revenue has raised following grounds of appeal :

- "1. *On the facts and circumstances of the case and in law, the CIT(A) has erred in directing the A.O. not to exclude 90% of sale tax refund from business profits for calculating the deduction u/s.80HHC without appreciating the fact that the judgement laid down by the Hon'ble Bombay High Court in the case of M/s.Dresser Rand India Pvt. Ltd. (323 ITR 429)(Bom) wherein it was held that 90% sale of sale tax refund should be excluded for computing business profit within the meaning of clause (baa) of explanation to section 80HHC of the Act for the purpose of computation of deduction u/s.80HHC of the I.T.Act.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in directing the A.O. to exclude 90% of business centre receipts from business profit for calculating the deduction u/s.80HHC relying on the findings given by the Hon'ble ITAT in assessee's own case for A.Y.1998-99 and 2002-03 without appreciating the fact that the Revenue has not accepted the decision of the ITAT and challenged the issue before the Hon'ble High Court"*
3. When the Appeal was taken up for hearing none was present on behalf of the Assessee. On examining the issues raised in the appeal and the order passed by the CIT(A), we proceeded to adjudicate the appeal on merits after hearing the Learned Departmental Representative.
4. We note that the CIT(A) had granted relief to the Assessee by following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2002-03 [ITA No.3189/Mum/2006 order, dated 21/09/2009].
5. We also note that the issue raised in the present appeal pertain to inclusion/exclusion of the Business Centre Receipts and Sales Tax Refund of INR.59,04,330/- and INR.2,11,104/-, respectively, while computing the quantum of deduction under Section 80HHC of the Act. Therefore, the tax effect involved in the present appeal is well below the enhanced specified threshold of INR 60 Lakhs for filing appeals before the Tribunal introduced vide Circular No. 9 of 2024. The aforesaid circular came into effect from the date of the circular

(i.e. from 17/09/2024) and applies to all pending appeal preferred by the Revenue. Accordingly, the present appeal preferred by Revenue is dismissed as withdrawn with liberty to the Revenue to revive the same by way of filing miscellaneous application within prescribed time in case the appeal falls within the ambit of any of the exceptions carved out from the applicability of the aforesaid circular.

6. In result, the present appeal preferred by the Revenue is dismissed.

Order pronounced on 28.11.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.11.2024
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai