IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA Nos.-3490 to 3495/Del/2011
(Assessment Years: 2000-01 to 2006-07)

Paliwal Overseas Ltd. Paliwal Nagar, G.T. Road, Panipat. AABCP1067E	vs	ACIT Central Circle Panipat.

Assessee by	**Sh. Satish Kumar Goel, Adv.**
Revenue by	**Sh. Ashish Chandra Mohanty, Sr. DR**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

These bunch of six appeals are filed against a consolidated order dated 18/03/2011 passed by the ld. CIT (Appeals)-Karnal for six different assessment years. ITA No. 3490 has been preferred by the assessee for AY 2000-01. ITA No. 3491 has been preferred by the assessee for AY 2000-01. ITA No. 3492 has been preferred by the assessee for AY 2002-03. ITA No. 3493

has been preferred by the assessee for AY 04-05. ITA No. 3494 has been preferred by the assessee for AY 05-06 and ITA 3495 has been preferred by the assessee for AY 06-07. Since all these appeals had identical issues and they were heard together, they are being disposed of by this common order. We now take up the appeals one by one.

2. ITA No. 3490/Del/2011 for AY 2000-01

The brief facts are that the assessee company derived income from manufacturing and export of cotton/handloom products. During the assessment proceedings, the AO noted that the assessee had paid interest of Rs. 1.13 crores on borrowings from Banks but had at the same time given interest free loans/advances to various persons for non business purposes on which no interest was charged. The AO also noted that interests attributable to these amounts were also disallowed in earlier assessment years 1996-97 to 1999-2000. The AO also noted that the assessee had admitted the factum of giving loans/advances for non business purposes. It was the

assessee's contention that it had interest free deposits from M/s Paliwal Industries P. Ltd. and, therefore, if any interest on interest free advances was to be disallowed, the amount of interest free deposits should also be considered and only the net interest should be disallowed. The AO worked out interest @ 10% on these interest free advances and added Rs. 24,28,047/- to the income of the assessee out of the bank interest paid. The AO further noticed that the assessee had received interest of Rs. 3,33,405/- on margin money FDRs which was shown under the head "business income". The AO was of the view that this interest was assessable under the head "income from other sources" rather than under the head "business income" and in the assessment this interest income was assessed as "income from other sources". Further the AO also consequently reduced the claim of the assessee u/s 80HHC after treating the interest income of Rs. 3,33,405/- as "income from other sources". In addition to this the AO also made *adhoc* disallowances of Rs. 20,000/- out of miscellaneous expenses, Rs. 35,000/- out of

repairs and maintenance expenses and Rs. 10,000/- out of advertisement expenses.

2.1 Aggrieved the assessee preferred an appeal before the First Appellate Authority on these issues. However, the ld. CIT (A) upheld the disallowances/additions made by the AO and dismissed the assessee's grounds of appeal.

2.2 Now the assessee has preferred an appeal before the ITAT and the grounds of appeal raised by the assessee are as under:

1. *"That the order of the learned Commissioner of Income Tax (Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT(Appeals) in confirming disallowance of Rs.24,28,047/- out of Interest paid by the company as deemed interest chargeable on alleged interest free advances is highly arbitrary, illegal, void and uncalled for.*
3. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT (Appeals) in confirming the order of ACIT in segregating interest received at Rs.3,33,405/- on margin money FDRs which were made for raising export packing credits and foreign bills limits*

against which interest was paid to the bank at Rs. 1,17,08,600/- and treating the same to be Income from Other Sources is highly arbitrary against judicial discipline illegal, void and uncalled for.

4. *That the order of the learned Commissioner of Income Tax in confirming the order of the AO in isolating bank interest on margin money FDRs at Rs.3,33,405/- against bank interest paid at Rs. 1,17,08,600/- for the purposes of reducing claim of deduction u/s 80HFIC is altogether arbitrary, illegal, void and uncalled for.*

5. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax confirming disallowances of Rs.20,000/- out of miscellaneous expenses Rs.35,000/- out of repairs and maintenance expenses Rs. 10,000/- out of advertisement expenses is arbitrary, illegal and uncalled for."*

3. The ld. AR submitted that as far as ground no. 2 of the assessee's appeal is concerned, the ld. CIT (A) while confirming the disallowance of Rs. 24,28,047/- out of the interest paid by the company as deemed interest chargeable on alleged interest free advances has completely ignored the fact that the assessee had a paid up capital of Rs. 95.40 lakhs as well as accumulated

profits/reserves of Rs. 4,881.62 lakhs as interest free funds available with it. He drew our attention to the copy of the balance sheet for the year ended 31.03.2000 and 31.03.1999 in support of his contentions. He further submitted that the bank loans amounting to Rs. 11,48,72,106/- as on 31.03.2000 were much less than fixed assets, business investments, stocks, sundry debtors, bank and cash etc. and hence, there was no diversion of borrowed funds for the purpose of making interest free advances. The ld. AR submitted that there was no reason to disallow interest on the facts and circumstances of the case. On ground no. 3 regarding treatment of interest on FDR as "income from other sources", the ld. AR submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble Punjab and Haryana High Court in the case of Paliwal Industries (a sister concern of the assessee) in ITA No. 431 and 432/08 in judgment dated 30.09.2008. On ground no. 4 regarding the reduction in claim of deduction u/s 80HHC, the ld. AR submitted that the same is covered in favour of the assessee by assessee's own case for FY 1995-96 in ITA No. 1874/2000. On

ground no. 5 relating to *adhoc* disallowances the ld. AR submitted that the details of the expenses were made available in the assessment proceedings itself and hence, the contention of the department that all the expenses were not properly vouched was factually incorrect.

4. The ld. DR supported the order of the lower authorities and submitted that the disallowances/additions had been correctly made and should be sustained.

5. We have heard the rival submissions and perused the material on record. As far as ground no. 2 regarding the disallowance on account of notional interest on interest free advances is concerned, it is seen that it is the contention of the assessee that the assessee had a paid up capital of 95.40 lacs and accumulated reserves of 4,881.62 lacs which were in fact interest free funds available with it and as against this the interest attributable to interest free advances was Rs. 3,00,18,97/- only. Assessee has also placed reliance on the decision of the Hon'ble Apex Court in the case of SA Builders vs.

CIT 288 ITR 1 (SC). The ld. CIT (A) was of the opinion that since the capital of the assessee has already been applied for other business purposes, it was reasonable to conclude that interest free advances had been made out of interest bearing funds. The ld. CIT (A) was also of the opinion that the exact source of making the interest free advance had not been furnished by the assessee and hence, the disallowance has been rightly made by the AO. The AO has on page 1 and 2 of the assessment order reproduced a list of 33 concerns to which interest free advances have been made by the assessee company and has opined that no distinction can be made between long term advances and short term advances. The AO however, did agree to the assessee's contention that notional interest payable on interest free advances ought to be allowed while computing the disallowance and he accordingly, gave a benefit of Rs. 5,73,850/- and calculated the net disallowance at Rs. 24,28,047/-. However, on going through the assessment order it is clear that the AO has nowhere established a nexus between interest bearing funds on one hand and loans and advances

given by the assessee free of interest on the other. Various judicial pronouncements on the allowability of interest on loan for business purposes u/s 36(1)(iii) have focused on the nexus between borrowed funds and interest free advances.

5.01 In the case of CIT vs. Sridev Enterprises 192 ITR 165 (Karn.), it was the Hon'ble Karnataka High Court's *dicta* that, *"in respect of the advances made during the accounting year in question, the matter was remitted to find out whether the advances made in the year of account have come out of borrowed funds or not and if it is shown to be out of funds not borrowed, then no disallowance can be made."*

5.02 Similarly, in the case of CIT III vs. Naval Technoplast Industries Ltd. (order dated 24/09/2012), the Hon'ble Gujarat High Court observed that, "*with respect to question no. 2, we noticed that the AO made addition of Rs. 16,62,000/- of the interest on advances made by the Assessee Company to certain concerns in which the directors of the companies were interested. The CIT (A), however, noted that the assessee had funds more*

than Rs. 7,38,14,637/- by way of share capital reserves and surplus on which no interest was incurred. The Commissioner, therefore, was of the opinion that the assessee had sufficient funds to make interest free advances and that borrowed funds on interest were not directed for making interest free advances……When two authorities found on facts that no interest bearing funds were directed for making interest free advances, in our view, no question of law would arise."

5.03 In the case of Mysore Minerals Ltd. 142 ITD 128 (Bang.) (Trib.), the Bangalore Bench, while adjudicating on an identical issue, opined that, "*We have heard both parties and carefully perused the material on record. We find from the record that, it is not the case of the AO that VIPL to whom the amount of Rs. 2 crores was given, is a sister concern of the assessee. It also appears that the AO failed to appreciate the reasons for advancing this amount by the assessee. The Assessing Officer failed to establish any direct nexus that the sum of Rs. 2 crores given to VIPL was out of Rs. 6 crores advanced by M/s Kalyani Steels Ltd. The ld. CIT (A) in his order has also given a finding*

that the amount advanced to VIPL is done in earlier years and not in the impugned year. In this factual matrix, we do not find any reason to interfere with the decision of the ld. CIT (A) deleting the addition of Rs. 6 lacs made by the AO."

5.04 Another important judgment on this issue was given by the Hon'ble Punjab and Haryana High Court in the case of CIT Faridabad vs. Mare Auto Industries 12 taxman.com 259 (P&H). In this case the assessee had interest bearing loans and it had made advances to sister concerns free of interest. No evidence was produced that interest bearing funds were diverted to make investment in sister concerns. The Hon'ble Punjab and Haryana High Court held that no addition could have been made in this case.

5.05 On the issue of interest free funds available with the assessee, the Hon'ble Bombay High Court held in the case of CIT vs. Reliance Utilities and Power Limited 313 ITR 340 (Bom.) that if both interest free and interest bearing funds were available

with the assessee, the presumption is that advances were made out of interest free funds.

5.06 On the other hand, the Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Limited vs. CIT 286 ITR 1 observed that the theory of establishing nexus between funds borrowed and their diversion for non business purposes cannot be accepted. The Hon'ble High Court held that there should be a nexus between the use of borrowed funds for the purposes of business to claim deduction u/s 36(1)(iii). However, this judgment of the Hon'ble Punjab and Haryana High Court was set aside by the Hon'ble Apex Court in the case of SA Builders Ltd. 288 ITR 1 (SC) in which the Hon'ble Apex Court agreed with the earlier judgment of the Hon'ble Delhi High Court in CIT vs. Dalmia Cement Ltd. 254 ITR 377 (Del.) that once it is established that there was a nexus between expenditure and the purpose of business, the Revenue cannot assume the role to decide as to how much is reasonable expenditure having regard to the circumstances of the case. It was, therefore, held that even if there is a nexus of borrowed funds with funds advanced

interest free, the measure of commercial expediency has to be necessarily looked into before making disallowance of interest on borrowed funds. The Hon'ble Apex Court observed as under:

> "*To consider whether one should allow deduction u/s 36(1)(iii) of interest paid by the assessee on amounts borrowed by it for advancing to a sister concern, the authorities and the courts should examine the purpose for which the assessee advanced the money and what the sister concern did with the money. That the borrowed amount is not utilized by the assessee in its own business but had been advanced as interest free loan to its sister concern is not relevant. What is relevant is whether the amount was advanced as a measure of commercial expediency and not from the point of view whether the amount was advances for earning profits.*
>
> *Once it is established that there was nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having*

regard to the circumstances of the case. No businessman can be compelled to maximize his profits."

5.06 Subsequently, the Hon'ble Apex Court in the case of Munjal Sales Corporation vs. CIT 298 ITR 298 held that no disallowance of interest on borrowed funds could be made when the interest free advances are established to be out of capital or profits of the assessee during the year. Hence, establishment of nexus of borrowed funds with the funds advanced interest free was and still remains a critical condition for making any disallowance of interest.

5.07 Hence, on the facts of the present case as well as the various judicial pronouncements on the issue coupled with the fact that the department itself allowed the interest paid by the assessee in AY 2009-10 (by the AO) and 2010-11{by the ld. CIT(A)}, we hold that since the assessee had adequate interest free funds and no nexus was established by the AO between the interest bearing funds on one hand and the interest free advances on the other, there is no justification in making any

notional disallowance on account of interest. We set aside the order of the ld. CIT (A) on this issue and direct the AO to delete this disallowance.

5.08 In the result, ground no. 2 of the assessee's appeal is allowed.

5.1 As far as the issue of taxing interest on FDRs under "income from other sources" instead of business income is concerned, the assessee has relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of Paliwal Industries in ITA No. 431 and 432 of 2008. A perusal of this decision brings out the fact that the Hon'ble Punjab and Haryana High Court has followed its earlier decision in the case of CIT (Central) Ludhiana vs. M/s Avery Cycle Industries Ltd., Ludhiana in ITA No. 73 of 2005 and allowed the assessee's (Paliwal Industries' Appeal). It is seen that interest amounting to Rs. 3,33,405/- has been earned on FDRs which were kept as margin money for raising export packing credit and foreign bills limits and hence, it cannot be disputed that such income is

essentially in the nature of business income and not income from other sources. The Hon'ble Delhi High Court in CIT vs. Jaypee DSC Ventures Limited 335 ITR 132 (Del.) has held as under:

> *"As is noticeable from the stipulations in the agreement, the performance guarantee by way of bank guarantee was required for faithful performance of its obligations. The non submission of the guarantee would have entailed in termination of the agreement and NHAI would have been at liberty to appropriate bid security. That apart, the release of such performance security dependent upon certain conditions. Thus, it is clearly evincible that the bank guarantee was furnished as a condition precedent to entering the contract and further it was to be kept alive to fulfill the obligations. Quite apart from the above, the release of the same was dependent on the satisfaction of certain conditions. Thus, the present case is not one where the assessee had made the deposit of surplus money lying idle with it in order to earn interest; On the contrary, the amount of interest was earned from fixed deposit which was kept in the Bank for furnishing the bank guarantee. It had an inextricable nexus with securing the contract. The view express by the Tribunal cannot be found fault with. The Tribunal was therefore, justified in holding that the interest earned by the assessee on*

the FDRs has intrinsic and inseggregable nexus with the work undertaken and, therefore, the interest earned by the assessee is capital in nature and shall go towards adjustment against the project expenditure and the same cannot be assessed as income from other sources."

5.1.1 Hence, respectfully following the ratio of judgments as laid down by the Punjab and Haryana High Court in the case of Paliwal Industries as well as the Hon'ble Delhi High Court in the case of CIT vs. Jaypee DSC Ventures Limited (supra), we have no hesitation in holding that the interest on FDRs is to be assessed as business income and not as income from other sources. We set aside the order of the ld. CIT (A) on this issue and direct the AO to amend the computation accordingly.

5.1.2 Ground no. 3 of the assessee's appeal is accordingly allowed.

5.3 Ground no. 4 of the assessee's appeal challenges the impugned action of the ld. CIT(A) in confirming the order of the AO in isolating bank interest on margin money FDRs at Rs. 3,33,405/- against bank interest paid at Rs. 1,17,08,600/- for

the purpose of reducing claim of deduction u/s 80HHC. It is the assessee's contention that the issue is covered in favour of assessee's own case in ITA No. 1874/2000 for FY 1995-96. On going through the rival submissions as well as the decision of the coordinate Delhi Bench we find that on this issue also the assessee ought to succeed. The Delhi Bench has relied upon the case of Lalson Enterprises vs. DCIT 82 TTJ (Del.)(SB) 1048, wherein the Special Bench has held that for the purposes of applying Explanation (baa) below Section 80HHC(4B) while reducing 90% of receipt by way of interest from profit of business, it is only 90% of net interest remaining after allowing a set off of interest paid which has a nexus with interest received that can be reduced and not 90% of gross receipt. The Special Bench of the Tribunal in the case of Lalsons Enterprises (supra) has also held so on the basis of the computational provisions, wherein as per sec. 37 only expenditure incurred for earning of an income is to be allowed as a deduction u/s 37 of the Act.

5.3.1 In the facts and circumstances of the case and keeping in view the consistent view of the coordinate Benches,

we hold that for the purpose of applying Explanation (baa) below Section 80HHC (4B) while reducing 90% of receipts by way of interest from profit of business, it is only 90% of net interest received that can be reduced and not 90% of the gross receipt. We, therefore, set aside the order of the ld. CIT (A) on this issue and restore the same to the file of the AO with the direction to re-compute the allowable deduction u/s 80HHC of the Act accordingly.

5.3.2 Ground no. 4 of the assessee's appeal is allowed for statistical purposes.

5.4 In ground no. 5 the assessee has challenged confirmation of disallowances of Rs. 20,000/- out of miscellaneous expenditure, Rs. 35,000/- out of repairs and maintenance expenditure and Rs. 10,000/- out of advertisement expenses. A perusal of the assessment order shows that a sum of Rs. 1,66,634/- has been debited to the profit and loss account on account of miscellaneous expenses against which Rs. 20,000/- have been disallowed on the basis that some expenses have not

been properly vouched. No specific instances of vouchers not being available on record or not having been produced have been pointed out. Similarly, Rs. 28,12,671/-has been claimed under repairs and maintenance expenses and the AO has disallowed a sum of Rs. 35,000/- on the ground that all these expenses are not properly vouched. Again no specific discrepancies have been pointed out in this regard. Further, out of the total sum of Rs. 1,03,900/- debited to the profit and loss account on account of advertisement expenses, a disallowance of Rs. 10,000/- has been made on the ground that some expenses were not properly vouched. The ld. CIT(A) in Para 4.04 of the impugned order has mentioned that no bills or vouchers were produced for examination, nature of repairs/expenses have not been explained and copies of approval for undertaking the construction were not filed and accordingly, the *adhoc* disallowances were confirmed. Having gone through the factual matrix of the case, it is very much apparent that the AO has made these disallowances without pointing out any specific defects in the vouchers. It is also noteworthy that the accounts

of the assessee were duly audited and no adverse finding has been reported by the auditors in this regard. Hence, in absence of any specific defect/discrepancy being pointed out and brought on record, we are unable to concur with the view taken by the Department on this issue and we set aside the impugned order of the ld. CIT (A) and direct the AO to delete these additions/disallowances.

5.4.1 In the result, ground no. 5 is allowed.

5.5 In the final result, the appeal of the assessee is allowed.

6. ITA No. 3491/Del/2011 for AY 2001-02

For AY 2001-02 the assessee has two effective grounds of appeal besides challenging the validity of reassessment proceedings. Ground no. 2 challenges the action of the ld. CIT (A) in confirming the validity of reassessment proceedings. Ground no. 3 challenges the action of the ld. CIT (A) in confirming the order of the DCIT (AO) in segregating interest received amounting to Rs. 6,09,565/- on margin money FDRs and treating the same to be income from other sources. Ground no. 4 challenges the

impugned action of the ld. CIT(A) in confirming the order of the AO in isolating bank interest on margin money FDRs and excluding DEPB(Duty Entitlement Passbook Scheme) at Rs. 1,46,65,282/- for reducing the claim of deduction u/s 80HHC. The grounds of appeal read as under:

1. *"That the order of the learned Commissioner of Income Tax (Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT (Appeals) in confirming validity of reassessment proceedings is highly arbitrary, illegal, void and uncalled for.*
3. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT (Appeals) in confirming the order of DCIT in segregating interest received at Rs.6,09,565/- on margin money FDRs which were made for raising export packing credits and foreign bills limits against which interest was paid to the bank at Rs.78,54,390/- and treating the same to be Income from Other Sources is highly arbitrary against judicial discipline illegal, void and uncalled for.*
4. *That the order of the learned Commissioner of Income Tax in confirming the order of the AO in isolating bank interest on margin money FDRs at Rs.6,09,565/- against bank interest*

paid at Rs.78,54,390/-and excluding DEPB at Rs. 1,46,65,282/- for the purposes of reducing claim of deduction u/s 80HHC is altogether arbitrary, illegal, void and uncalled for.

6.1 It is seen that ground no. 3 of assessee's appeal in this year is similar to ground no. 3 of the assessee's appeal in ITA No. 3490/Del/2011 for AY 2000-01. This issue has already been decided in favour of the assessee in the above said appeal for AY 2000-01. Following the same we allow this ground in this year also.

6.1.1 In the result, ground no. 3 is allowed.

6.2 On ground no. 4, the ld. AR submitted that the constitutional validity of insertion of conditions in the third and fourth provisos to section 80HHC (3) of the Act by amendment of Taxation Laws (Second Amendment) Act, 2005 with retrospective effect was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court transferred the matters pending before various High Courts to the Hon'ble High Court of Gujarat. In these Special Civil Applications before the Hon'ble High Court of

Gujarat, it was the submission of the petitioners that the benefit of deduction u/s 80HHC of the Act was available to them from AY 1998-99 to AY 2004-05 and that they had settled their affairs based on the availability of the said benefit up to 31st March, 2004. It was submitted by the petitioners that through this Amendment the respondents (CIT and Others) seek to take away the benefit retrospectively after the entire period of benefit was over on 31st March, 2004. It was the petitioners' contention that the amendment sought to grant some conditional benefit selectively to certain assessees in January, 2006 with retrospective effect for the period AY 1988-89 to AY 2004-05. The petitioners further contended that the impugned portion of the said amendment discriminated between the assessee falling in the same class which was prohibited by Article 14 of the Constitution of India and at the same time imposed new pre-conditions retrospectively for being eligible for deduction u/s 80HHC of the Act. It was further contended by the petitioners that the said amendment denied retrospectively the deduction u/s 80HHC to exporters having turnover of more than Rs. 10

crores although the exporters were encouraged to increase their turnover as an incentive to avail deduction u/s 80HHC. The petitioner further contended that the amendment granted deduction with respect to export having turnover of more than Rs. 10 crores whose products were notified or were eligible for both Duty Drawback Scheme and Duty Entitlement Passbook Scheme and that the rate of Duty Drawback is higher than DEPB while the rest of the exporters were singled out without there being any rational basis for making the aforesaid classification. The petitioners further contended that the denial was against the principle of promissory estoppel and that the amendment sought to upset the financial structuring based on which the assessees had arranged and planned their business affairs and that the amendment also upset the settled law laid down by the various Tribunals. The ld. AR filed a copy of the judgment rendered by the Hon'ble High Court of Gujarat in the bunch of Special Civil Applications which were disposed of on 02/07/2012 under the name of Avani Exports and Others vs.

CIT Rajkot and others. The ld. AR submitted that in view of the judgment the assessee's claim also ought to be allowed.

6.2.1 The ld. DR relied on the order of the lower authorities.

6.2.2 We have heard the rival submissions and perused the material on record. It is seen that an amendment was made by the Taxation Laws Amendment Act, 2005 in Section 80HHC w.e.f. 01/04/1998. Second, third and fourth provisos were inserted below sub-section (3) of Section 80HHC and clauses (iiid) and (iiie) were inserted in Section 28 of the Act and the cumulative effect of these amendments was that deduction u/s 80HHC was to be allowed on DEPB in cases having export turnover of above Rs. 10 crores, subject to fulfillment of two conditions that DEPB rate was lower than the rate of Duty Drawback and the assessee had an option to choose either the DEPB or Duty Drawback Scheme. It has been the Department's contention that the assessee did not fulfill these conditions although its turnover was more than Rs. 10 crore. The Department has contended that the amount of profit on sale of

DEPB license is not to be considered for working out deduction u/s 80HHC of the Act. However, the Hon'ble High Court of Gujarat has struck down the retrospective amendment to Section 80HHC. The Hon'ble Gujarat High Court has held that the amendment granting benefit restricting it to a class of assessees whose turnover was less than Rs. 10 crore was permissible only prospectively and by making it retrospective it took away an enjoined right of a class of citizen who availed of a benefit by complying with the requirements of the then provisions of law. The Hon'ble Gujarat High Court has laid down in paras 26 and 27 as under:

> *"26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the ld. Counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessee whose assessments were still pending although such benefit will be available to the assessee whose assessments have already been*

concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a fewer section of the assessee.

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assesses whose export turnover is above Rs. 10 crore. In other words, the retrospective amendment should not be detrimental to any of the assesses."

6.2.3 It is further seen that a sister concern of the assessee company, M/s Paliwal Exports, had also challenged the insertion of conditions in the third and fourth proviso to Section 80HHC (3) of the Act by amendment with retrospective effect before the Hon'ble Punjab and Haryana High Court in CWP No. 9546 of 2008, wherein through its decision dated 22.02.2013 the Hon'ble Punjab and Haryana High Court held as under:

"In all these petitions, insertion of conditions in the third and forth proviso to Section 80HHC (3) of

the Act by amendment of Taxation Laws (Second Amendment) Act, 2005 with retrospective effect have been challenged. It is a matter of record that similar writ petitions were filed in various High courts. Transfer petition was filed in the Supreme Court and the Supreme Court had directed transfer of all those writ petitions to the High Court of Gujarat. The High Court of Gujarat vide judgment dated July 02, 2012 decided the said bunch of writ petitions and quashed the impugned amendment only to the extent that the operation of the said section could be given effect from the date of the amendment and not in respect of earlier assessment years. The Bombay High Court following the aforesaid judgment of the Gujarat High Court, disposed of all the writ petitions before it in the following manner:

> *"It is admitted that the present writ petitions are identical to the Writ Petitions which were the subject matter of the Transfer Petitions before the Supreme Court and the judgment of the Gujarat High Court.*
>
> *Only the first four writ petitions listed above were the subject matter of the Transfer Petitions. In other words, the first four matters stood transferred to the Gujarat High Court pursuant to the above orders of the Supreme Court. The other petitions,*

therefore, did not stand transferred to the Gujarat High Court.

Keeping in mind that the Supreme Court had transferred all the matters to the Gujarat High Court in order to avoid confusion and difficulties in enforcement of conflicting judgments of different High Courts, we are of the view that it would be appropriate in these writ petitions to follow the judgment of the Gujarat High Court.

In the circumstances, for the above reason, the Writ Petitions, other than the first four writ petitions are disposed of in the terms of the order and judgment of the Gujarat High Court. The first four writ petitions, in any event, stand disposed of by the order and judgment of the Gujarat High Court. No order as to costs."

All the writ petitions are disposed of in a similar manner, in same terms."

6.2.4 Hence, respectfully following the ratio of judgment laid down by the Hon'ble Gujarat High Court and as followed by the Hon'ble Punjab and Haryana High Court, we set aside the impugned order of the ld. CIT(A) on this issue and direct the AO to re-compute the quantum of deduction u/s 80HHC after including the amount of DEPB credit.

6.2.5 This ground of assessee's appeal is accordingly allowed.

6.3 As far as ground no. 2 of the assessee's appeal challenging the validity of reassessment proceedings u/s 147 of the Act is concerned, as the other two grounds of appeal have already been decided in favour of the assessee on merits, we choose not to adjudicate on this legal ground challenging the validity of reassessment proceedings as the same has become academic in nature.

6.4 In the result, the appeal of the assessee is partly allowed.

7. ITA No. 3492/Del/2011 for AY 2002-03

In this year's appeal also issues are identical to those in AY 2000-01 and 2001-02. Ground no. 2 challenges the action of the ld. CIT (A) in confirming the order of the AO in segregating interest of Rs. 17,75,181/- received on margin money FDRs and treating the same as income from other sources. Ground no. 3 challenges the impugned action of the ld. CIT (A) in confirming

the order of the AO in isolating bank interest on margin money FDRs and reducing the claim of deduction u/s 80HHC. The grounds of appeal read as under:

1. *"That the order of the learned Commissioner of Income Tax (Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT (Appeals) in confirming the order of ACIT in segregating interest received at Rs. 17,75,181/- on margin money FDRs which were made for raising export packing credits and foreign bills limits against which interest was paid to the bank at Rs. 60,96,127/- and treating the same to be Income from Other Sources is highly arbitrary against judicial discipline illegal, void and uncalled for.*
3. *That the order of the learned Commissioner of Income Tax in confirming the order of the AO n isolating bank interest on margin money FDRs at Rs. 17,75,181/- against bank interest paid at Rs.60,96,127/- for the purposes of reducing claim of deduction u/s 80HHC is altogether arbitrary, illegal, void and uncalled for."*

7.1 It is seen that ground no. 2 is identical to ground no. 3 of the assessee's appeal in AY 2000-01 and the same has been allowed in favour of the assessee. On the same reasoning and on identical facts this ground also deserves to succeed.

7.1.1 In the result, ground no. 2 of assessee's appeal is allowed.

7.2 Further ground no. 3 is identical to ground no. 4 of assessee's appeal for AY 2000-01 and on identical set of facts this ground also deserves to succeed and while setting aside the impugned order of the ld. CIT (A) on this issue, we restore the matter to the file of AO for re-computation of deduction u/s 80HHC in terms of our directions issued in the appeal for AY 2000-01.

7.2.1 Hence, this ground is allowed for statistical purposes.

7.3 In the final result, the appeal of the assessee is allowed.

8. ITA No. 3493/Del/2011 for AY 2004-05

The grounds of appeal raised by the assessee are as under:

1. *"That the order of the learned Commissioner of Income Tax (Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT(Appeals) in confirming disallowance of Rs.7,63,816/- out of Interest paid by the company as deemed interest chargeable on alleged interest free advances is highly arbitrary, illegal, void and uncalled for.*
3. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT (Appeals) in confirming the order of ACIT in segregating interest received at Rs.26,74,914/- on margin money FDRs which were made for raising export packing credits and foreign bills limits against which interest was paid to the bank at Rs.49,63,862/- and treating the same to be Income from Other Sources is highly arbitrary against judicial discipline illegal, void and uncalled for.*
4. *That the order of the learned Commissioner of Income Tax in confirming the order of the AO in isolating bank interest on margin money FDRs at Rs.26,74,914/-*

against bank interest paid at Rs.49,63,862/- for the purposes of reducing claim of deduction u/s 80FIHC is altogether arbitrary, illegal, void and uncalled for.

5. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax confirming disallowances of Rs. 10000/- out of miscellaneous expenses Rs.25000/- out of repairs and maintenance expenses Rs.43000/- out of advertisement expenses is arbitrary, illegal and uncalled for.*

6. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax(Appeals) in further upholding disallowances of Rs.25000/- out of Travelling expenses, Rs.25000/- out of Staff Welfare expenses and Rs.25000/- out of Telephone expenses is irrational, arbitrary and uncalled for.*

7. *That the order of the learned Commissioner of Income Tax (Appeals) in confirming disallowance of House Tax paid at Rs.49995/- in respect of property at which the business of the appellant is being carried out is illegal and uncalled for.*

8. *That learned Commissioner of Income Tax has further erred in upholding exclusion of interest on margin money FDRs and DEPB for the purposes of deduction*

u/s 80HHC which is illegal and uncalled for.

9. *That ld. CIT has further erred in upholding exclusion of interest on margin money FDRs and DEPB for the purposes of deduction u/s 80HHC which is illegal and uncalled for."*

8.1 It is seen that ground no. 2 is identical to ground no. 2 of assessee's appeal in 2000-01 which has already been adjudicated in favour of the assessee and the disallowance has been deleted. As disallowance in this year has been made on identical set of facts as in as in AY 2000-01, on a similar reasoning we set aside the order of the ld. CIT(A) on this issue and direct the AO to delete the addition of Rs. 7,63,816/- on account of notional interest chargeable on interest free advances.

8.1.1 In the result, ground no. 2 of the assessee's appeal is allowed.

8.2 As far as the issue of treating interest received on margin money FDRs amounting to Rs. 26,74,914/- as income from sources is concerned, this issue is also squarely covered in favour of the assessee by our adjudication in ITA No.

3490/Del/2011 for AY 2000-01 wherein we have allowed ground no. 3 of the assessee's appeal. This issue has also been adjudicated in favour of the assessee in appellate proceedings for subsequent years in AY 2001-02 and 02-03 in ITA Nos. 3491 & 3492 respectively. We find no reason to adjudicate differently in this year.

8.2.1 In the result, ground no. 3 of the assessee's appeal is allowed.

8.3 Further, ground no. 4 is identical to ground no. 4 of assessee's appeal for AY 2000-01 and on identical set of facts this ground also deserves to succeed and while setting aside the impugned order of the ld. CIT (A) on this issue, we restore the matter to the file of AO for re-computation of deduction u/s 80HHC in terms of our directions issued in the appeal for AY 2000-01.

8.3.1 Hence, this ground is allowed for statistical purposes.

8.4 Ground no. 8 is identical to ground no. 4 of the assessee's appeal for AY 2001-02 in ITA No. 3491/Del/2011.

This issue has been decided in favour of the assessee and on identical set of facts, we allow the assessee's ground of appeal this year also and while setting aside the order of the ld. CIT (A) we restore the matter to the file of the AO for re-computation of deduction u/s 80HHC.

8.4.1 In the result, ground no. 8 of assessee's appeal is allowed for statistical purposes.

8.5 Ground no. 5 and 6 challenge the confirmation of disallowance of Rs. 10,000/- out of miscellaneous expenses, Rs. 25,000/- out of repairs and maintenance, Rs. 43,000/- out of advertisement expenses, Rs. 25,000/- out of traveling expenses, Rs. 25,000/- out of staff welfare expenses and another Rs. 25,000/- out of telephone expenses. A perusal of the assessment order reveals that all these amounts have been disallowed on an *adhoc* basis without pointing out any specific defect either in the books of accounts or recording a finding that these expenses were inadmissible. Hence, in absence of any clear cut finding of defect either by the AO or by the ld. CIT (A),

we find no reason to uphold these disallowances and while setting aside the order of the ld. CIT (A) we direct the AO to delete these disallowances.

8.5.1 Ground nos. 5 and 6 are accordingly allowed.

8.6 Ground no. 7 challenges the action of the ld. CIT (A) in confirming the disallowance of House Tax amounting to Rs. 49,995/- in respect of the property which the assessee claims is used for the purpose of the business. It is seen that the receipt of the property tax has been issued in the name of one of the Directors Shri Avinash Chander Sharma and the AO has opined that the same did not relate to the business of the assessee. The ld. CIT (A) held that nothing had been brought on record to establish that the property was used for the business of the assessee. It has been the assessee's contention that the premises are being used for the purpose of assessee's business but even before us the claim of the assessee could not be substantiated. Hence, we have no alternative but to confirm the

disallowance and we accordingly, uphold the impugned action of the ld. CIT (A) on this issue.

8.6.1 In the result, ground no. 7 of the assessee's appeal is dismissed.

8.7 In the final result, the appeal of the assessee is partly allowed.

9. ITA No. 3494/Del/2011 for AY 2005-06

The grounds of appeal raised by the assessee are as under:

1. *"That the order of the learned Commissioner of Income Tax (A) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT(Appeals) in confirming disallowance of Rs.6,92,966/- out of Interest paid by the company as deemed interest chargeable on alleged interest free advances is highly arbitrary, illegal, void and uncalled for.*
3. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax confirming disallowances of Rs.10,000/- out of miscellaneous expenses Rs.30,000/- out of*

repairs and maintenance expenses Rs.10,000/- out of advertisement expenses is arbitrary, illegal and uncalled for.

4. *That the learned Commissioner of Income Tax (Appeals) has further erred in upholding disallowances ofRs.20,000/- out of staff welfare expenses, Rs.15000/- out of travelling expenses and Rs.25,000/- out of Telephone expenses which is arbitrary and uncalled for."*

9.1 It is seen that ground no. 2 is identical to ground no. 2 of assessee's appeal in 2000-01 which has already been adjudicated in favour of the assessee and the disallowance has been deleted. As disallowance in this year has been made on identical set of facts as in as in AY 2000-01, on a similar reasoning we set aside the order of the ld. CIT(A) on this issue and direct the AO to delete the addition of Rs. 6,92,966/- on account of notional interest chargeable on interest free advances.

9.1.1 In the result, ground no. 2 of the assessee's appeal is allowed.

9.2 Ground nos. 3 and 4 challenge the confirmation of *adhoc* disallowances of Rs. 10,000/- out of miscellaneous expenses, Rs. 30,000/- out of repairs and maintenance expenses, Rs. 10,000/- out of advertisement expenses, Rs. 20,000/- out of staff welfare expenses, Rs. 15,000/- out of traveling expenses and Rs. 25,000/- out of telephone expenses. A perusal of the assessment order reveals that all these amounts have been disallowed on an *adhoc* basis without pointing out any specific defect either in the books of accounts or recording a finding that these expenses were inadmissible. Hence, in absence of any clear cut finding of defect either by the AO or by the ld. CIT (A) we find no reason to uphold these disallowances and while setting aside the order of the ld. CIT (A) we direct the AO to delete these disallowances.

9.2.1 Ground nos. 3 and 4 of the assessee's appeal are accordingly allowed.

9.3 In the final result, the assessee's appeal is allowed.

10. ITA No. 3495/Del/2011 for AY 2006-07

The grounds of appeal raised by the assessee read as under:

1. *"That the order of the learned Commissioner of Income Tax (Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned CIT(Appeals) in confirming disallowance* of Rs. 6,92,9661/- *out of Interest paid by the company as deemed interest chargeable on alleged interest free advances is highly arbitrary, illegal, void and uncalled for.*
3. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax confirming disallowances of Rs.20,000/- out of advertisement expenses is arbitrary, illegal and uncalled for.*
4. *That in the facts and circumstances of the case of the appellant the order of the learned Commissioner of Income Tax(Appeals) in upholding disallowance of House Tax Paid at Rs. 1,31,938/- in respect of premises where the business of the company is being carried out is altogether arbitrary, illegal and uncalled for.*
5. *That learned Commissioner of Income Tax (Appeals)*

has further erred in confirming addition of Rs.2,63,209/- in respect of alleged estimated agriculture expenses which is arbitrary illegal and uncalled for."

10.1 It is seen that ground no. 2 is identical to ground no. 2 of assessee's appeal in 2000-01 which has already been adjudicated in favour of the assessee and the disallowance has been deleted. As disallowance in this year has been made on identical set of facts as in as in AY 2000-01, on a similar reasoning we set aside the order of the ld. CIT(A) on this issue and direct the AO to delete the addition of Rs. 6,92,966/- on account of notional interest chargeable on interest free advances.

10.1.1 Ground no. 2 of the assessee's appeal is accordingly allowed.

10.2 Ground no. 3 challenges the disallowance of Rs. 20,000/- out of advertisement expenses. A perusal of the assessment order reveals that this amount has been disallowed on the basis that the assessee could not explain the nature of

the advertisement and could also not furnish the proof of advertisement. The ld. CIT (A) held that even the copy of magazine in which the advertisement was printed was not produced. The ld. AR invited our attention to page 12 of the PB for AY 2005-06 and submitted that the advertisement had been released for a full page colour advertisement in the magazine being brought out by an NGO and named *'Sashart'*. On going through the relevant documents as well as the orders of the authorities below and the submission made by the ld. AR, we find that page no. 12 of the paper book is a letter dated 22/04/2005 addressed to Sh. Avinash Chander Paliwal seeking advertisement in the magazine to be brought out. However, copy of the receipt issued for advertisement was not on record. Similarly, copy of magazine in which the advertisement was printed is also not on record. Hence, we find no reason to interfere with the conclusion arrived at by the lower authorities and we accordingly uphold the disallowance.

10.2.1 Ground no. 3 of the assessee's appeal is accordingly dismissed.

10.3 Ground no. 4 was not pressed by the assessee and it was submitted as the necessary rectification on this issue has already been carried out by the AO.

10.3.1 Hence, ground no. 4 is dismissed as not pressed.

10.4 Ground no. 5 challenges a confirmation of addition of Rs. 2,63,209/- in respect of estimated agricultural expenses. It is seen that the AO has observed that no details regarding the expenses were available on record. The ld. CIT (A) also confirmed the same by holding that the details were not verifiable. However, before us the ld. AR pointed out that a detailed ledger account of agricultural expenses was on record. Also details of agricultural income were on record. Our attention was invited to pages 15 and 16 of the paper book for AY 06-07 which contained copies of these accounts respectively. On an overall view of the factual matrix of this disallowance we deem it appropriate to restore the issue to the file of the AO for re-examination and re-adjudication after having duly considered the evidences to be submitted by the assessee in this regard.

10.4.1 Ground no. 5 of the assessee's appeal is allowed for statistical purposes.

10.5 In the result, the appeal of the assessee is partly allowed.

11. In the final result ITA No. 3490/Del/2011 is allowed, ITA No. 3491/Del/11 is partly allowed, ITA No. 3492/Del/11 is allowed, ITA No. 3493/Del/11 is partly allowed, ITA No. 3494/Del/11 is allowed and ITA No. 3495/Del/11 is partly allowed.

Order is pronounced in the open court on 30th June, 2016

Sd/-	Sd/-
(L.P. SAHU)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 30.06.2016
**Kavita Arora*

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI