

(2011) 07 MAD CK 0208

**Madras High Court****Case No:** Tax Case (Appeal) No"s. 303 to 305 of 2005

A.R. Enterprises

APPELLANT

Vs

The Assistant Commissioner of  
Income TaxRESPONDENT

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**Date of Decision:** July 27, 2011**Acts Referred:**

- Income Tax Act, 1961 - Section 80HHC

**Citation:** (2011) 202 TAXMAN 28**Hon'ble Judges:** M. Jaichandren, J; Chitra Venkataraman, J**Bench:** Division Bench**Advocate:** R. Venkatanarayanan, for Subbaraya Aiyer, for the Appellant; Patty B. Jeganathan, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Chitra Venkataraman, J.

The issues arising for consideration in these tax case appeals relates to the assessment years 1997-1998, 1998-1999 and 1999-2000.

2. The common questions of law raised in respect of the assessment years 1997-1998, 1998-1999 and 1999-2000 are as follows:

1. Whether the Appellate Tribunal was right in law in holding that the interest receipts from Short Term Deposits with bank for opening Letter of Credit has to be assessed as income from other sources?

2. Whether the Appellate Tribunal was right in law in holding that the interest income has to be assessed as income from other sources inspite it relates to business of the Assessee.

3. As far as the assessment year 1999-2000, apart from the two questions there is yet another question which is as follows:

Whether the Appellate Tribunal was right in law in holding that interest earned from the advance made by the Appellant should be assessable with interest income under the head "other sources"?

4. The tax cases are filed by the Assessee, as against the common order of the Tribunal. The Assessee herein is engaged in the business Timber import and sale. The Assessee received a sum of Rs. 7,92,451/-by way of interest on Fixed Deposits. The Assessee also had interest income earned on the money lent to other parties.

5. In respect of the interest income received on the fixed deposits, the Assessee contended that the same has to be treated, as "income from business". Hence, it could not be treated as "income from other sources". The Assessing Officer, as well as the Commissioner of Appeals, rejected the plea of the Assessee.

6. On an appeal before the Tribunal, it was pointed out that the interest received on short term deposits though could be attributed to the business, could not be treated as an "income derived from business". The Assessee contended that the said fixed deposits were made for the purpose of opening of Letter of Credit and for the other benefits which are necessarily required for export business. The Tribunal pointed out to the correspondence with the bank and stated that that there was No. compulsion at all or insistence from the bank for making any fixed deposits towards the opening of the Letter of Credit.

7. On the other hand the Letter of Credit was sanctioned on the basis of the business of the Assessee, credit worthiness and security offered. Thus, the income received from the fixed deposits could not be treated as "income from business". On the other hand the income on the deposits held by the Assessee could only be assessed as "income from other sources".

8. As regards the interest earned on money lent, the Tribunal pointed out that the Assessee's main business was trading in timber, machinery, Pharmaceuticals Even though the partnership deed did not prohibit any activity in money lending, yet the deed revealed that the object of the business was not money lending. The Tribunal further pointed out that out of the surplus money available, the Assessee advanced money to other firms. This by itself would not mean that the Assessee was carrying on money lending business as in the ordinary course of business. Thus, the Tribunal rejected the case of the Assessee and held that the income earned from the advances made by the Assessee is assessable, under the head of "income from other sources". Aggrieved by the same, the present appeal.

9. It is seen from the decision of this Court reported in [Commissioner of Income Tax Vs. V. Chinnapandi](#), that in working out the relief u/s 80HHC of the Income Tax Act, 1961, the question as regards the treatment to be given to the interest received was considered, applying Clause (baa) of the Explanation to Section 80HHC of the Income Tax Act, 1961, this Court held that the interest received though includable in the gross total income of the Assessee, yet for the purposes of Clause (baa) of the

Explanation to Section 80HHC of the Income Tax Act, 1961, there would be an exclusion of 90% of the interest income, while calculating the deduction under 80HHC of the Act.

10. Applying the said decision to the facts herein, it is clear that the interest income earned on the Fixed deposits, treated as income from other sources, hence, needs to be considered in the calculation to be done in accordance with Clause (baa) of the Explanation to Section 80HHC of the Income Tax Act, 1961. In so holding, there is No. hesitation in confirming the order of the Tribunal. Thus, the tax case appeals relating to the assessment years 1997-1998, 1998-1999 and 1999-2000, stand dismissed in so far as the two questions are concerned.

11. As regards the assessment year 1999-2000, in respect of the Assessee as to whether the interest earned from the advances should be assessed under the head of "income from other sources", the Tribunal gave a finding that the interest income was earned on advances given out of surplus funds which was not in the ordinary course of business. Going by the said finding, in the absence of any other material to substantiate that the Assessee was not doing money lending business also, we have No. hesitation in confirming the view of the Tribunal. Consequently, the question raised in the tax case appeal in T.C. No. 305 of 2005, relating to the assessment year 1999-2000, is answered in favour of the Revenue and against the Assessee. The Tax Case Appeals stand dismissed. No. costs.