

(2009) 02 CAL CK 0073

Calcutta High Court

Case No: Income Tax A. No. 359 of 2004 in G.A. No. 2077 of 2004

Commissioner of Income Tax

APPELLANT

Vs

J.J. Exporters Ltd.

RESPONDENT

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**Date of Decision:** Feb. 17, 2009**Acts Referred:**

- Income Tax Act, 1961 - Section 80HHC, 80HHC(3), 80HHC(4C)

**Citation:** (2010) 324 ITR 329**Hon'ble Judges:** Sankar Prasad Mitra, J; Pinaki Chandra Ghose, J**Bench:** Division Bench**Advocate:** Bhowmick, for the Appellant;**Final Decision:** Dismissed

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**Judgement**

1. We have perused the application for condonation of delay. In our considered opinion sufficient cause has been shown to condone the delay in filing the present appeal. The application for condonation of delay is thus allowed and disposed of. We now take up the application for admission of the appeal.

2. Mr. Bhowmick, Learned Counsel appearing in support of this application tried to point out the grievance in this matter is in respect of interest on loan and the interest from bank (short-term deposit). The facts of the case are as follows:

3. This appeal is for the assessment year 1996-97. The Assessing Officer was directed to treat interest income as business income and not income from other sources. Hence, the appeal was preferred by the assessee before the Learned Tribunal. The assessee is an exporter of silk fabrics. During the assessment year, the assessee received interest on various heads including the interest on loan and interest from bank (short-term deposit). The assessee treated the amount of interest as business income and claimed deduction u/s 80HHC of the Act. According to the assessee, the surplus funds were temporarily invested in loans and advances and earned interest. The Learned Commissioner of Income Tax (Appeals) in its order

considered the said issue and directed the Assessing Officer to treat the interest income as business income and not income from other sources and further directed to recalculate the deduction u/s 80HHC of the said Act. Taking into account such facts the contention of the Department before the Learned Tribunal was that the interest income has no business relationship and thus the same could not be considered while calculating deduction u/s 80HHC of the Act. It was submitted on behalf of the assessee that the interest income was not claimed u/s 80HHC(3) of the Act but only 10 per cent, of the said amount was claimed for the purpose of deduction u/s 80HHC in terms of Explanation (baa) to Sub-Section (4C) of Section 80HHC of the Act.

4. The Learned Tribunal considered these facts and came to the conclusion that the aggregate amount which could not be said to be an income, being the interest income, is a business income and could be considered for deduction u/s 80HHC of the Income Tax Act, 1961. The Learned Tribunal also relied upon a decision of the Hon'ble Supreme Court in [Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras](#), and came to the conclusion that the interest earned by the assessee on loans, interest from bank (short-term deposit) and the income on the booking of cars and other income, the details of which are mentioned in the account was the interest earned by the assessee by putting the surplus fund arose on account of business carried on by the assessee and the said business was authorized by Clause 18 of the objects clause of the memorandum and articles of association of the assessee.

5. In these circumstances, the Learned Tribunal upheld the order of the Commissioner of Income Tax (Appeals) that the interest from the above loan is the income of the assessee during the course of its business and as such it is to be assessed under the head "Business income", and therefore, the Commissioner of Income Tax (Appeals) was justified to direct the Assessing Officer to consider the said interest.

6. In these circumstances, we have not been able to find out any illegality or irregularity in respect of the order so passed by the Learned Tribunal and we come to the conclusion that in the facts and the material placed before us, there is no substantial question of law involved in the matter to admit the appeal. Hence the appeal is dismissed.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.