

**Bio Pharma Vs. Dy. Cit**

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**Court :** Income Tax Appellate Tribunal ITAT Ahmedabad

**Decided On :** Mar-11-2002

**Reported in :** (2002)75TTJ(Ahd.)486

**Appellant :** Bio Pharma

**Respondent :** Dy. Cit

**Judgement :**

This appeal is filed by the assessee against the order dated 26-4-1995, passed by the learned Commissioner (Appeals) for assessment year 1992-93.

Vide grounds of appeal, the assessee assails the conclusion of the learned Commissioner (Appeals) that the interest on fixed deposits aggregating to Rs. 5,71,689 is not to be included for the purpose of computation of deduction under section 80HH for the assessment year 1992-93 under reference.

The assessing officer excluded the interest income for the purpose of computing deduction under section 80HH on the ground that the interest income cannot be treated as income derived from the industrial undertaking. The learned Commissioner (Appeals) upheld the action of the assessing officer and reached the conclusion that the interest income on fixed deposits cannot be said to be profits derived from the industrial undertaking of the assessee since the expression "derived from" has to be construed in a restricted manner.

Aggrieved with the order of the learned Commissioner (Appeals), the assessee has come up in appeal before us. The grounds of appeal, which bring out the grievance of the assessee, are reproduced hereunder : (i) The order of Commissioner (Appeals) not allowing deduction under section 80HH in respect of interest of Rs. 5,71,689 is bad in law as also on facts.

(ii) The Commissioner (Appeals) failed to appreciate that the above interest was earned from the surplus funds of the industrial undertaking and, therefore, was nothing but the profits and gains derived from an industrial undertaking and was also taxed as such as having been taxed as business income the only business being the business of the industrial undertaking and, therefore, section 80HH relief ought to be allowed thereon.

(iii) The Commissioner (Appeals) erred in so far as he did not follow the order of his predecessor in office for the assessment years 1990-91 and 1991-92 whereby he had held that the assessee is entitled to 80HH relief in respect of such interest.

Shri Manish J. Shah, the learned counsel for the assessee argued that the assessee has received interest on fixed deposits which are lying pledged with the bank as security against margin money for letter of credit and bank guarantee as well as cash credit facilities availed of by the assessee. Shri Shah further submitted that in the preceding assessment years, the Tribunal has decided the issue in favour of the assessee holding that the interest income on fixed deposits form part of profits of the industrial undertaking qualifying for deduction under section 80HH. A copy of Tribunal's order dated 2-5-2000 in ITA Nos.

4138 and 4139/Ahd/1993 has been placed on record. The Tribunal has placed reliance on the decision of the Hon'ble Gujarat High Court in the case of CIT v. Gujarat Mineral Dev. Corpn. (1981) 132 ITR 377 (Guj) in support of its conclusion that the interest income qualifies for relief under section 80HH. The learned counsel argued that the Tribunal is bound by its earlier decisions and if a contrary view is to be taken, the matter needs to be referred to a larger Bench. The learned counsel further relied upon the following decisions :Inductotherm (India) Ltd. v. Dy. CIT (ITA Nos. 3850 to 3852/Ahd/1995 and others, dated 13-12-2001; (3) Kinetic Honda Motor Ltd, v. Jt, CIT (2001) 72 77J (Pune-Trib) 72; andMayank Electro Ltd.

v. ITO The learned counsel next placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC) and argued that the interest derived on FDs is directly connected to and incidental to manufacturing business of the assessee since the fixed deposits have been pledged with the bank authorities as security against the margin money as well as cash credit facilities.

The learned counsel further placed reliance on the decision of Delhi Bench of Tribunal in the case of Asstt. CIT v. Gallium Equipment (P) Ltd. (2001) 79 I TD 41 (Del-Trib) (TM) wherein majority view of the Bench supported the case of the assessee that the interest on FDs is liable to be aggregated for computation of deduction under section 80-I. Shri Umaidsingh Bhati, the learned Senior Departmental Representative, on the other hand, strongly supported the order of the learned Commissioner (Appeals) and argued that the words "derived from" used in section 80HH should be given a restricted meaning and whenever the legislature wants to give a wider expression, the legislature has used the expression "attributable to". According to the learned Departmental Representative the expression "profits and gains derived from the industrial undertaking" connotes that immediate and effective source of income eligible for grant of relief under section 80HH must be the industrial undertaking itself and not any other source. Shri Bhati further urged that the mandate of law is that unless the source of profit is the undertaking, the assessee is not eligible to claim deduction under section 80HH. The learned Departmental Representative further added that the immediate source of interest income is the bank deposits and not the industrial undertaking. The learned Departmental Representative pointed out that the legislature has deliberately and consciously used the expression "derived from" whereas in similar provisions the words "attributable to" have earlier been used, e.g., in section 80E which was inserted by the Finance Act, 1966 with effect from 1-4-1966. That section was omitted and in its place section 80I was introduced by the Finance (No.

2) Act, 1967, with effect from 1-4-1968. In both these provisions, the legislature has used the expression "profits and gains attributable to". Subsequently, when section 80-I was again inserted by the Finance (No.

2) Act, 1980, with effect from 1-4-1980 earlier section 80-I was omitted by the Finance Act, 1972 with effect from 1-4-1973, the legislature opted for the use of expression "profits and gains derived from an industrial undertaking" obviously for the purpose of narrowing down the scope and ambit of the provision. The learned Departmental Representative pressed into service an unending array of judicial pronouncements of Hon'ble Supreme Court as well as various High Courts in support of his contention that the expression "derived from" has to be construed in a narrow and restricted manner and would include "profits and gains derived from the conduct of business of industrial undertaking" that industrial undertaking being direct and immediate source of profit. As against this, the expression "attributable to" is certainly wider in import and would bring within its purview the receipts from sources which have commercial connection with the business of the assessee. The learned Departmental Representative placed reliance on the following decisions in support of his contentions :

(1) CIT v. Raja Bahadur Kamakhya Narayan Singh & Ors. (1948) 16 ITR 325 (PC);

(2) Cambay Electric Supply Industrial Co. Ltd. v. CIT (1978) 113 ITR 84 (SC);

(3) Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. CIT (1982) 137 ITR 616 (Guj); CIT v. Tamil Nadu Small Industries Development Corpn. Ltd. (2000) 241 ITR 578 (Mad);

(11) South India Shipping Corporation Ltd. v. CIT (1999) 227 ITR 24 (Mad);

(12) Tuticorin Alkali Chemicals and Fertilisers Ltd. v. CIT (1998) 227 ITR 172 (SC); Gujarat Petrosynthese Ltd. v. Dy. CIT (2001) 76 ITD 257 (Ahd-Trib);

(17) Lupin Agrochemical (I) Ltd. v. Dy. CIT (2000) 75 ITD 278 (Mum-Trib).

The learned Departmental Representative next argued that since the entire controversy stands concluded by a catena of decisions of Hon'ble Supreme Court as well as various High Courts, these decisions are binding and should be followed in the instant case. Regarding the decision of Ahmedabad Bench of Tribunal in the assessee's own case for earlier years relied upon by the learned

counsel, the learned Departmental Representative submitted that in the said decision the learned Members have not considered the binding decisions of Hon'ble Supreme Court cited above and, therefore, a contrary view by the Tribunal is not correct. The learned Departmental Representative further submitted that the law as laid down by the Hon'ble Supreme Court is the law of the land, and no court or Tribunal is entitled to take a contrary view. Regarding the decision of the Hon'ble Supreme Court in the case of Bokaro Steel Ltd. (supra) heavily relied upon by the learned counsel, the learned Departmental Representative argued that the decision is entirely distinguishable on facts and issue involved there and it renders no assistance to the assessee's case. The learned Departmental Representative made specific mention of the decision of Hon'ble Madras High Court in the case of South India Shipping Corporation (supra) wherein their Lordships have followed their earlier decision in Pandian Chemical's case (supra) and held that the interest on bank FDs represents income from other sources and cannot be construed as "profits and gains of industrial undertaking".

The learned Departmental Representative emphasized that the facts of the instant case are on all fours with the aforesaid decision of Hon'ble Madras High Court and therefore, the view taken by the learned Commissioner (Appeals) deserves to be upheld. We have carefully considered the rival submissions and gone through the orders of the revenue authorities below. Various judicial pronouncements of Hon'ble Supreme Court as well as various High Courts cited by the learned representatives of both sides have also been gone through by us.

The basic question which falls for determination before us is whether interest from FDs which have been pledged by the assessee's with the bank authorities for availing of cash credit facilities, etc., is liable to be treated as "profits and gains derived from an industrial undertaking" for the purpose of section 80HH. Even though the issue is, in our opinion, fully covered by the binding decisions of the Hon'ble Supreme Court as well as Hon'ble Gujarat High Court and other High Courts, since the learned representatives of both sides argued that matter with a considerable zeal and passion, we think it would be proper to deal with the issue at length and consider the string of judicial authorities cited before us.

The answer to the question before us, largely turns on the scope and meaning of the expression "derived from" used in section 80HH. The word "derived" has received judicial interpretation apart from its narrow meaning in the dictionary. As far back in 1948, the Privy Council in *CIT v. Raja Bahadur Kamakhaya Naryan Singh* (supra), considered the scope of that word. It was held that interest on rent of agricultural land was not an agricultural income as it was not revenue derived from the land. In reaching that conclusion this is what the Privy Council observed at page 328 : "Equally clearly the interest on rent is revenue, but in their Lordship's opinion it is not revenue derived from land. It is no doubt true that without the obligation to pay rent and rent is obviously derived from land there could be no arrears of rent and without arrears of rent there could be no interest. But the affirmative proposition that interest is derived from land does not emerge from this services of facts. All that emerges is that as regards the interest, land rent and non-payment of rent stand together as causes sine quibus non. The source from which the interest is derived has not thereby been ascertained.

The word "derived" is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest, land indeed appears in the second degree, but the immediate and effective source is rent which has suffered the accident of non-payment. And rent is not land within the meaning of the definition.

There is no commercial connection between the interest and the rented land and an effective source-not land has become apparent." It is apparent from the above observations that the Privy Council assigned a restricted meaning to the word "derived". In the view of the Privy Council, if an enquiry is to be made into the genealogy of the time or the product, the enquiry should stop as soon as the effective source is discovered, and there shall not be any further enquiry into any other matter, however closely connected with the effective source in question.

In *Cambay Electric Supply Industrial Co. Ltd. v. CIT* (supra) the Supreme Court has also given the same meaning to the word "derived" while examining the scope of section 80E of the Act as it then stood.

While explaining the distinction between the expression "attributable to" and the expression "derived from" this is what the Supreme Court observed : "As regards the aspect emerging from the expression "attributable to" occurring in the phrase, "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from".

Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from" as for instance, in section 80J. In our view, since the expression of wider import namely, "attributable to" has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity." In CIT v. Sterling Foods (supra), the Hon'ble Supreme Court following its aforesaid judgment held that the receipts from the sale of import entitlements are not profits derived from the industrial undertaking for the purpose of section 80HH. The Hon'ble" Supreme Court held that the source of the import entitlements is the Export Promotion Scheme of the Central Government and therefore, there is no direct nexus between the profits and gains and the industrial undertaking. To obtain the benefit of section 80HH, the assessee has to establish that the profits and gains were derived from the industrial undertaking and it was not just sufficient that the commercial connection was established between the profits earned and the industrial undertaking. The industrial undertaking itself had to be the source of the profit. The business of the industrial undertaking had directly to yield that profit. The industrial undertaking should be direct source of that profit and not a means to earn the profit.

In *Hindustan Lever Ltd. v. CIT* (1999) 239 ITR 297 (SC) the Supreme Court had an occasion to construe the phrase "profits and gains derived from the export of any goods". The assessee exported groundnut oil and the import entitlements obtained from the Government of India were utilised by the assessee to purchase goods for use in manufacture of other products which were sold in India. The Supreme Court held that the profits from sales could not be said to have been derived from export sales. According to the Supreme Court the immediate sources of the profit was sale of goods and the export of other goods was not even the second degree but it had to be traced to an even more remote degree. In the chain of sequence the earlier export would be four degrees away.

From the aforesaid decisions of the Privy Council and the Supreme Court, it becomes clear that the expression "derived from" has a definite but narrow meaning and it cannot receive a flexible or wider concept. There is a well known principle of construction of statute that where legislature uses in Act a legal term which has received a judicial interpretation, it was to be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears. Applying this rule of interpretation in the instant case and respectfully following the aforesaid decisions of the Apex Court, it would clearly follow that the phrase "profits and gains derived from an industrial undertaking" has been judicially interpreted as meaning that direct and immediate source of receipt is the industrial undertaking and the nexus is of the first degree in the genealogical tree.

As we have earlier seen, the assessee in the instant case before us is an industrial undertaking engaged in the business of manufacture of pharmaceuticals. The interest income from the fixed deposits cannot be said to be derived from the industrial undertaking inasmuch as source of the receipt is the fixed deposits with the bank and not the industrial undertaking. In the genealogical tree of interest receipt, connection with the industrial undertaking may be of the second degree and not of the first degree. The contention of the learned counsel that the fixed deposits have been utilised for the purpose of providing security to the bank authorities for availing of cash credit facilities or for the purpose of margin money would not in any manner alter the genealogical connection of the second degree

with the industrial undertaking. The interest on fixed deposits may be incidental to the business of the assessee but it would not fulfil the strict and exacting requirements engrained into the statutory provisions of section 80HH by the legislature. Significantly the words used in sections 80HH and 80-I are "profits and gains derived from an industrial undertaking". When the legislature initially inserted the provisions of section 80-I by the Finance (No. 2) Act, 1967, it used the phrase "attributable to"- The section was however omitted by the Finance Act, 1972, with effect from 1-4-1973, and reinserted by the Finance (No. 2) Act, 1980 with effect from 1-4-1981, wherein the legislature has substituted the expression "derived from" in place of "attributable to" used in earlier section. Thus, the legislative history relating to sections 80-I, 80E and 80HH eloquently brings out the express legislative intention of giving a narrow and restricted meaning to the expression "derived from" in conformity with the judicial interpretation by the highest court.

At this stage, we may usefully refer to various High Court decisions which have a direct bearing on the question of eligibility of interest income on fixed deposits in the context of the provisions of sections 80HH and 80-L. These decisions are obviously direct authorities for deciding the question arising in the present appeal before us.

We would first refer to the decision of the Hon'ble Madras High Court in the case of CIT v. Pandian Chemicals (supra) cited by the learned Departmental Representative. In this case, the assessee- company engaged in the manufacture and sale of potassium chlorate had to deposit money with Tamil Nadu Electricity Board under the requirements of the statute for getting power supply and earned interest income on such deposits. The Hon'ble Madras High Court observed at page 506 of the report as under : "A study of various case laws clearly indicates that a restricted meaning is given when the legislature uses the expression, "derived from". Though the assessee has necessarily to make the deposit with the Electricity Board for running the industry and the power supply will not be made without the deposit in favour of the Electricity Board, the income derived from the deposit with the Electricity Board cannot be said to have been derived from the industrial undertaking. The immediate source of interest is the deposit itself, and the effective source of the genealogy of the source of the interest income is the

deposit and not business, as the industrial undertaking is removed by one step from the source of income for the interest. Hence, the interest income cannot be held to be derived from the industrial undertaking. In other words, the immediate and effective source of the interest is the deposit and not the industrial undertaking." "The deposit might be an incidental investment with the business of the industrial undertaking and that would not be sufficient to render the interest income as profits and gains derived from the industrial undertaking. The fact that the amount was assessable as business income itself would not be sufficient to hold that the interest income was derived from the actual conduct of the business of the industrial undertaking." We may next refer to the decision of the Hon'ble Madras High Court in the case of South India Shipping Corporation Ltd. v. CIT (supra) wherein after detailed and exhaustive discussion of case law, the court held that the interest received by a company which carries on business, from bank deposits and loans could, only be taxable as "income from other sources" and not as "business income". The court placed reliance on the Supreme Court decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT (supra). The Hon'ble Madras High Court further rejected the claim for netting made by the assessee against interest income and held that the interest paid on the overdraft obtained for the purpose of business, cannot be deducted from the interest earned on moneys kept in fixed deposits as such income derived by way of interest on fixed deposits has to be taxed under the head "income from other sources". The court then proceeded to refer to various other earlier decisions on the issue as mentioned below, taking a contrary view that the interest income on FDS derived by the assessee had to be assessed under the head "business income" as under :CIT v. Tamil Nadu Dairy Development Corporation Ltd. (1995) 216 ITR 535 (Mad); CIT v. A.P. Industrial Infrastructure Corporation Ltd. (1989) 175 ITR 361 (AP); and "All these decisions which have held that the interest received on short-term bank deposits by an assessee carrying on business and having the business income are not to be treated as income from other sources, but as business income must be held to have been impliedly overruled by the decision of the Supreme Court in the case of Tuticorin Alkali Chemicals (supra)." A similar view has been taken in the following decisions of various other High Courts laying down that interest received by a company from bank deposits and loans could only be

taxed as income under the head "other sources" under section 56 of the Act.

Applying the ratio of the aforesaid decisions to the facts of the instant case, it is evidently clear that interest on fixed deposits received by the assessee, even if such fixed deposits have been utilised by way of securities against the cash credit facilities or margin money, would partake of the character of income from other sources and not as business income. There is, therefore, no question of including the aforesaid interest income for the purpose of computation of deduction under section 80HH. Alternatively, we may point out that even if interest income from the fixed deposits is to be treated as business income, as strongly urged by the learned counsel before us, the essential requirements for allowing relief under section 80HH that the profits and gains are derived from industrial undertaking would not be fulfilled in the instant case and the assessee would not be entitled to relief under section 80HH. We have already discussed in the preceding paragraphs that direct and immediate source of the profits and gains should be the industrial undertaking and only then deduction (sic-under) section 80HH would be allowable. So merely because the interest on fixed deposits is to be treated as business income, would not automatically establish that the interest income is derived from the industrial undertaking.

Such interest income has been derived from the deposits with the bank and the source of the first degree nexus is the bank and not the industrial undertaking, The assessee would, therefore, not be entitled to deduction under section 80HH in respect of the interest from the fixed deposits.

Now we may refer to various decisions relied upon by the learned counsel in support of assessee's case. The first decision cited by the learned counsel in *Snam Progetti SPA v. Addl. CIT (supra)*. In this decision the Hon'ble Delhi High Court held that brought business forward losses of earlier years are liable to be set off against income from interest on bank deposits. The facts and issue involved in this decision are entirely different and the decision does not render any assistance whatsoever to the assessee's case.

In *CIT v. Paramount Premises (P) Ltd. (1991) 190 ITR 259 (Bom)* cited by the learned counsel, the point in issue was whether interest from fixed deposits is to

be assessed as income from other sources or as business income. There was no occasion for the High Court to consider whether such interest income can be treated as profits derived from the industrial undertaking. This decision, therefore, does not help the assessee's case.

The learned counsel has next relied upon the decision of Honble Supreme Court in the case of Vellore Electric Corporation Ltd. v. CIT (1997) 227 ITR 557 (SC). This decision pertains to assessment years 1969-70 and 1970-71. For these, assessment years the expression "attributable to" has been used in section 80-I of the Act. The appellant- company before the Supreme Court was a public limited company having a licence under the provisions of the Electricity (Supply) Act 1948 to distribute power in the Vellore and Ranipet areas. Under the statutory provisions of Electricity (Supply) Act, the assessee was obliged to invest the sums appropriate in the "contingencies reserve" in securities authorised under the Indian Trust Act, 1882. The issue arising before the Supreme Court was whether interest on such securities can be treated as profits and gains attributable to priority industry for the purpose of section 80-I. The Hon'ble Supreme Court referred to its earlier decision in Cambay Electric Supply Industrial CO Ltd. v. CIT (supra) and observed at page 572 that "the legislature has deliberately used the expression "attributable to" and not the expression "derived from".

The Supreme Court further observed that the expression "attributable to" is certainly wider in import than the expression "derived from". On the facts of the case, the Supreme Court held that the income from investments in securities can be said to be profits attributable to business of the electric company. This decision does not support the case of the assessee for deduction under section 80HH since the expression being construed by the Supreme Court "attributable to" has been held to be wider in import than the expression "derived from" used in section 80HH. The decision rather supports the case of the revenue for construing the expression "derived from" in a restricted and narrow manner.

The learned counsel has next placed heavy reliance on the decision of the Delhi Bench of the Tribunal in the case of Asstt. CIT v. Gallium Equipment (P) Ltd. (supra). In this case the Tribunal has held that interest on fixed deposits with the

bank made by the assessee would qualify for relief under section 80-I since the fixed deposits were pledged with the bank by way of securities. This decision apparently supports the case of the assessee.

However, with great respect to the Hon'ble Delhi Bench, we feel that the decision is contrary to the ratio of various decisions of Hon'ble Supreme Court as well as High Courts which we have referred to hereinabove and mention in this behalf may particularly be made of Sterling Foods (supra), Ahmedabad Mfg. & Calico Printing Co. Ltd. (supra) and CIT v. Pandian Chemicals Ltd. (supra). In view of the settled legal position regarding the construction of the expression "derived from" as laid down by various decisions of the Honble Supreme Court and followed by the Hon'ble Madras High Court in CIT v. Pandian Chemicals Ltd. (supra), we feel that any contrary view taken by a judicial authority would be violative of the Constitutional Directive enshrined in Article 141 of the Constitution of India. Article 141 lays down that "The law declared by the Supreme Court shall be binding on all courts within the territory of India". In other words, the law declared by the Supreme Court is made the law of the land. This article of the Constitution essentially envisages substantial role of the Supreme Court as a legal mentor of the nation. The phrase "Law declared" in Article 141 is of wide amplitude and takes in the "ratio decidendi" of the case as well as "obiter dictum". An obiter dictum or a mere enunciation of a principle of law pronounced ex cathedra would amount to a declaration of law, under Article 141. Obiter dicta of course does not include passing casual observation made by the Supreme Court. The Supreme Court, while construing "derived from" has consistently taken the view in the various decisions referred to earlier that the income should have connection of first degree with the industrial undertaking, i.e., a direct and immediate source of income should be the industrial undertaking. Interest income from fixed deposits does not obviously fulfil this test. Without going into the controversy whether interest income is to be treated as "income from other sources" or as "business income", the inference is irresistible that interest income from fixed deposit flows from the bank deposits and the first and immediate source of income is the bank deposits and not the industrial undertaking. Such interest income may have commercial connection with the industrial undertaking inasmuch as the fixed deposits have been utilised by way of securities by the assessee for its business

purpose. However, this fact by itself would not alter the basis character of the income as having first degree connection with the bank deposits and not the industrial undertaking. Any connection with the industrial undertaking would be of second degree and it would not qualify the receipt to be treated as "derived from" the industrial undertaking for the purpose of section 80HH. The correct connotation of the expression "derived from", as laid down and explained by the Supreme Court in various decisions does not leave any doubt or unambiguity that interest from fixed deposits does not directly flow from an industrial undertaking and cannot be treated as derived from the industrial undertaking. The fact that the fixed deposits have been used by way of securities by the assessee would not alter this position. We may further point out that the Madras High Court decision in Pandian Chemicals Ltd. (supra) following Sterling Foods (supra) and other decisions of the Supreme Court, is a direct authority for the proposition held by us that interest on fixed deposits would not be treated as profits derived from the industrial undertaking. In view of the settled legal position, we regret, we are unable to persuade ourselves to accept a contrary view taken by the Hon'ble Delhi Bench in the case of Gallium Equipment (P) Ltd. (supra).

On going through the aforementioned decision of the Delhi Bench of the Tribunal in the case of Gallium Equipment (P) Ltd. (supra), we notice that the decision of the Supreme Court in Sterling Foods (supra) as well as the decision of Madras High Court in Pandian Chemicals Ltd. (supra) have been sought to be distinguished by the Hon'ble Delhi Tribunal on grounds which do not appear to be tenable. In para 8, the Hon'ble Tribunal has observed that there was no discussion in the judgment of the Madras High Court in Pandian Chemical's case (supra) whether the assessee had made any payment on account of interest on borrowed funds. With great respect, we may point out that the distinction sought to be brought out by the Hon'ble Tribunal is not at all relevant for the point in issue whether interest on fixed deposits hold first degree of connection with the industrial undertaking or not.

In para 9, the Tribunal has referred to Supreme Court decision in the case of Vellore Electric Corporation Ltd. (supra). We have already discussed the facts and issue involved in the case of Vellore Electric Corporation Ltd. (supra) and

observed that the Supreme Court in the said decision construed the expression "attributable to" as against "derived from" used in section 80HH which is under consideration before us. The Hon'ble Tribunal has further referred to Supreme Court decision in the case of Ashok Leyland Ltd. v. CIT (1997) 224 ITR 122 (SC). This decision also interpreted the expression "attributable to" and not "derived from". The said decision, therefore, does not support the view taken by the Delhi Tribunal.

We may further point out that the Hon'ble Delhi Tribunal in para 13 of its aforesaid order has placed reliance on the decision of the Madras High Court in the case of CIT v. South India Shipping Corporation Ltd. (1995) 216 ITR 651 (Mad). We have already mentioned above that this decision has been overruled by the Hon'ble Madras High Court itself in its subsequent decision in South India Shipping Corporation Ltd. (supra).

The learned counsel has next cited the decision of Ahmedabad Bench "A" in the case of Inductotherm (India) Ltd. v. Dy. CIT (ITA Nos. 3850 to 3852/Ahd/1995). In this decision, the Hon'ble Tribunal held that the expression "derived from" as construed by the Supreme Court in Sterling Foods (supra) and various other decisions connotes direct and immediate nexus with the industrial undertaking and commission income, interest income on inter-corporate deposits as well as interest income earned by the assessee on deposits with Electricity Board for power connection, would not qualify for deduction under section 80-I. However, with regard to interest on deposits with bank utilised by way of security against credit facilities, the Hon'ble Tribunal opined that it would qualify for deduction under section 80-I. The Hon'ble Tribunal has followed the decision of Madras High Court in Pandian Chemicals Ltd. with regard to various types of interest income being outside the purview of section 80-I except with regard to interest on deposits against margin money and cash credit facilities, etc. With great respect to the Hon'ble Bench, we feel that interest on deposits with Electricity Board is intrinsically of the same nature and character as bank deposits utilised by way of securities and the view taken in favour of the assessee with regard to the bank deposits runs contrary to the direct decision of Pandian Chemicals Ltd. which has been followed by the Hon'ble Tribunal itself with regard to the other types of

income like interest on deposits with Electricity Board or telephone department, etc. If interest on deposits with Electricity Board for sanction of power, essential for assessee's manufacturing activity, does not constitute income derived from industrial undertaking, we fail to see how interest on bank deposits can be construed as derived from the industrial undertaking. In any case, the view taken by the Hon'ble Tribunal, with great respect to the Hon'ble Bench, appears to be contrary to settled legal position as laid down by a string of Supreme Court decisions as well as High Court decisions referred to above.

The decision of the Tribunal in the assessee's own case for the preceding assessment years relied upon by the learned counsel requires to be considered. We find that the Hon'ble Bench in the said decision have not considered the decisions of Hon'ble Supreme Court and various cCourts which have already settled the controversy. The Bench has relied upon mainly on the Gujarat High Court judgment in the case of CIT v. Gujarat Mineral Development Corporation (supra). The Gujarat decision, however, is clearly distinguishable and does not render any assistance to assessee's case before us. The Hon'ble High Court in the said case held that the amount kept by the assessee in short-term fixed deposits out of idle funds are to be included in the computation of capital employed for the purpose of relief under section 84 and under section 80J for the relevant years. The assessment years involved before the High Court were 1967-68, 1968-69 and 1969-70. There was no occasion for their Lordships to construe the words "derived from" or whether interest on fixed deposits represents profits derived from the industrial undertaking. The said judgment, therefore, does not in any manner support the assessee's case.

The learned counsel made a fervent plea that in case the earlier decisions of the Tribunal taking a contrary view are not followed, the matter may be referred to a larger Bench. However, we are not inclined to accept the contention in view of the fact that the legal position involving the point in issue before us is settled beyond doubt by a string of judicial authorities including Hon'ble Supreme Court, Hon'ble Gujarat High Court as well as various other High Courts which are binding on us. Since a contrary view against the Supreme Court decision is constitutionally impermissible and there is no doubt or unambiguity about the issue involved in the

present appeal, we have not thought it necessary to refer the issue to a larger Bench.

For the aforesaid reasons we hold that the interest income of Rs. 5,71,689 would not qualify for deduction under section 80HH. Therefore, ground of appeal Nos. (1) and (2) are dismissed.

The learned counsel for the assessee sought our permission to raise additional ground which reads as under : "Even if the interest is to be excluded then net interest shall have to be excluded and not the gross interest as has been done by the lower authorities." The learned counsel argued that the aforesaid ground has been raised by way of alternative contention and may be decided on the basis of facts on record. According to the learned counsel since no fresh facts are being relied upon and the issue raised is of legal nature, the addition ground may be admitted. After hearing both the parties, we are inclined to admit the additional ground.

The learned counsel submitted that even if the interest on fixed deposits as above is not construed as "profits and gains of industrial undertaking" for the purpose of section 80HH, the assessee may be allowed netting of interest and interest debited to the profit and loss account may be adjusted against the interest on fixed deposits and the net amount may be excluded for the purpose of computation of relief under section 80HH. The learned Departmental Representative on the other hand, opposed the submission and argued that since the interest income is to be treated as income from other sources and not the income of the industrial undertaking, there is no justification for allowing the benefit of netting of interest. In support of his contention, the learned Departmental Representative placed reliance on the following decisions : In rejoinder, the learned counsel placed reliance on the decision of the Supreme Court in the case of CIT v. Bokaro Steel Ltd. (supra).

After careful consideration of the rival submissions, we are inclined to reject the alternative contention for netting of interest receipt, raised by the learned counsel. While adjudicating the main grounds of the assessee we have held, after a detailed discussion of case law on the subject, that the interest from fixed deposits

received from the bank is to be treated as income from other sources and therefore, there is no justification for deducting any interest expenditure against the interest income from the fixed deposits. The fact that the fixed deposits have been utilised by the assessee for the purpose of cash credit facilities or margin money would not per se alter the nature of interest received from the bank as income from other sources. So far as interest debited to the profit and loss account is concerned, this has been allowed as a business expenditure. There is, therefore, no merit in the assessee's, contention for adjusting such expenditure against the interest from bank deposits. It is further to be noted that no facts and material have been brought on record on behalf of the assessee regarding the source of funds deposited with the bank, no case has been made out at any stage of the proceedings before the tax authorities or before us by the assessee that the assessee has borrowed funds for the purpose of making deposits with the bank. Unless the assessee proves that monies have been borrowed for making deposits with bank, there is no occasion for allowing the claim of netting made by the assessee. Regarding the reliance placed on the Supreme Court decision in the case of Bokaro Steel Ltd. (supra), we find that the decision does not help the assessee's case. At page 321 of the Reports the Apex Court has observed in Bokaro Steel judgment as under : "During these assessment years, the respondent-assessee had invested the amounts borrowed by it for the construction work which were not immediately required, in short-term deposits and earned interest. It has been held in these proceedings that the receipt of interest amounts to income of the assessee from other sources. The assessee has not filed any appeal from this finding which is given against it. In any case, this question is now concluded by a decision of this court in Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT (1998) 227 ITR 172 (SC). Hence, we are not called upon to examine that issue." Thus so far as interest on deposits is concerned, the Hon'ble Supreme Court has in this decision approved its earlier decision in Tuticorin Alkali & Chemicals Fertilizers Ltd. (supra) relied upon by the learned counsel.

From the foregoing discussion it clearly emerges that interest on bank deposits represents income under the head "income from other sources" and there is, therefore, no question of making any adjustment of interest expenditure debited to

the profit and loss account which is of the nature of business expenditure. The proposition is well settled by the decisions of the Supreme Court in the cases of Tuticorin Alkali Chemicals and Fertilizers Ltd. v. CIT (supra), CIT v. Dr. V.P.Gopinathan (supra) and CIT v. Autokast Ltd. (supra) Further reliance is placed on direct decision of Madras High Court in the case of South India Shipping Corporation Ltd. v. CIT (supra). Once bank interest falls under the head "other sources", any deduction liable to be made against such interest income, would be the expenditure covered under section 57 of Income Tax Act. Sub-clause (iii) of section 57 speaks of "any other expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income". The scope and ambit of sub-clause (iii) is limited and only such expenditure which is incurred by the assessee for earning the interest income on the bank deposits would thus be liable to be deducted. The assessee had not produced any facts before the revenue authorities to support the deduction of any expenditure against the bank interest under section 57(iii). Rather the ground No. (2) raised in the Memo of appeal, as reproduced earlier, clearly points out that the interest income of Rs. 5,71,689 has been earned from the surplus funds of the assessee- company. On these admitted facts, there is in any case no merit in assessee's claim for netting of interest.

For the foregoing reasons, we are, therefore, inclined to reject the additional ground raised by the assessee.

Before parting with this order, we may observe that various judicial authorities cited during the hearing before us have been perused and considered by us even if some of these authorities are not specifically referred in the body of the order.

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