

*Before Ajay Tewari & Avneesh Jhingan, JJ.*

**M/S EASTMAN INDUSTRIES—Appellant**

*versus*

**THE COMMISSIONER OF INCOME TAX (CENTRAL),  
LUDHIANA AND ANOTHER—Respondents**

**ITA No. 56 of 2001**

February 25, 2020

***Income Tax Act 1961-Section 260 A, Section 143(3), Section 80 HHC—The interest paid by the assessee is directly linked with the business and would be dealt with while calculating the income from business or profession—The lease money and interest income is not income from the business, rather it is income from the application of money which might have been earned from the business or profession—Held—There is no question of setting off/adjusting the interest paid vis-a-vis the interest received in the Profit and Loss account—Appeal dismissed***

*Held*, that in the facts of the present case, there is no question of setting off/adjusting the interest on debit side and on the credit side of the profit and loss account. The interest paid by the assessee is directly linked with the business and would be dealt with while calculating the income from business or profession. The lease money and interest income is not income from the business, rather it is income from application of money which might have been earned from business or profession. In such circumstances, there would be no question of netting/setting off the interest paid vis-à-vis the interest received. The Tribunal rightly rejected the contention of the assessee.

(Para 6)

Sunil Kumar Mukhi, Advocate  
*for the appellant.*

Rajesh Kumar Katoch, Senior Standing Counsel and  
Pridhi Jaswinder Sandhu, Junior Standing Counsel  
for the revenue.

**AVNEESH JHINGAN, J.**

(1) The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the 1961 Act') against the order dated 25.7.2000 passed by the Income Tax Appellate Tribunal, Chandigarh

Bench (for short, 'the Tribunal') partly allowing the appeal of the assessee. Following substantial questions of law have been claimed in the appeal:

“(a) Whether in the facts and circumstances of the case, the order Annexures P-1, P-2 and P-3 are legally sustainable ?

(b) Whether in the facts and circumstances of the case, the addition of Rs. 2,17,546/- made to be total turnover declared is legally sustainable. The same being based on mere presumptions and conjectures which cannot form the basis for adjudication?

(c) Whether in the facts and circumstances of the case, the addition of Rs. 2,17,546/- to the total turnover declared is legally sustainable in as much as the income allegedly liable to be included could have been Rs. 3,36,067/-, the same having not been verified.

(d) Whether in the facts and circumstances of the case, the interest income of Rs.21,97,071/- and lease income of Rs.52,532/- having being put within the domain of income from other sources is legally sustainable as the said had been derived on advance and deposit made.”

(2) The relevant facts are that the assessee filed income tax return for the year 1991-92 declaring income of 24,20,000/-. The assessee was trader and dealing in export of cycle parts. The assessment was finalised on 16.3.1993 under Section 143(3) of the Act. Certain additions were made and the income earned from leasing and interest on loans and advances given to sister concerns were considered as income under the head 'income from other sources'. The appeal was dismissed by the Appellate Authority vide order dated 31.3.1994. In appeal before the Tribunal, partial relief was given on 25.7.2000, however, the claim of deduction of lease income and interest income under Section 80HHC of the Act was rejected, hence the present appeal.

(3) Learned counsel for the appellant did not press questions (a) to (c). As regards question (d), learned counsel for the appellant conceded that the lease income and interest income from loans and advances to the sister concerns will come in the domain of 'income from other sources'. However, it is argued that the assessee had paid interest on certain loans availed, hence there should be setting

off/adjustment of interest received and paid, it is thereafter that net amount be considered for deduction under Section 80HHC of the Act. Reliance is placed on decision of the Supreme Court in *M/s ACG Associated Capsules (P) Ltd. versus Commissioner of Income Tax*<sup>1</sup>.

(4) The contention raised though is not directly covered by the question framed but as he same has been dealt with by the Tribunal and is therefore being adjudicated.

(5) The contention lacks merit.

(6) Once it is accepted that the income from lease and interest income is income from other sources, there is no question of it being eligible under Section 80HHC of the Act. The provision deals with deductions in respect of profits retained for export business. The income earned from interest and lease money is not income under the head 'profits and gains of business or profession'.

(7) In the facts of the present case, there is no question of setting off/adjusting the interest on debit side and on the credit side of the profit and loss account. The interest paid by the assessee is directly linked with the business and would be dealt with while calculating the income from business or profession. The lease money and interest income is not income from the business, rather it is income from application of money which might have been earned from business or profession. In such circumstances, there would be no question of netting/setting off the interest paid vis-à-vis the interest received. The Tribunal rightly rejected the contention of the assessee.

(8) Reliance on *M/s ACG Associated Capsules (P) Ltd.'s* case (supra) does not enhance the case of the appellant. The Apex Court was dealing with Clause (baa) of Explanation to Section 80HHC of the Act and it was in that context it was held that the expression "included in such profits" in Clause (1) of the Explanation (baa) would include receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of business as computed under the head "profits and gains of business or profession". Further, that if such type of receipts are allowed as expenses and not included in the profits of business, ninety per cent of such quantum of receipts cannot be reduced under Clause (1) of Explanation (baa) to Section 80HHC of the Act. In the present case, the interest received and the

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<sup>1</sup> (2013) 343 ITR 89

lease money is not even includable in the profits and gains determined under the head “profits and gains of business or profession”.

(9) The appeal is dismissed.

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*Payel Mehta*