

Bombay High Court Commissioner Of Income Tax vs Ravi Ratna Exports (P) Ltd. on 25 July, 2000 Equivalent citations: 2000 112 TAXMAN 577 Bom Author: Kapadia JUDGMENT Kapadia, J. By our order dated 25-7-2000, the appeal of the department was allowed in following terms: "This appeal concerns the assessment year 1989-90. The Income Tax Appellate Tribunal has held that interest income is business income. In view of the judgment of this court in Godavari Sugar Mills Ltd. (No. 2) v. CIT (1991) 57 191 ITR 359 (Bom), such income cannot be business income. It is income from other sources. Therefore, it will not form part of profits from business under section 80HHC. Hence, the appeal is allowed, No costs." 2. We now seek to give detailed reasons which are mentioned hereinbelow. 3. This appeal relates to the assessment year 1989-90. In the said assessment year, the assessee received Rs. 35,000 as interest on fixed deposits. The assessee claimed interest income and included the same in business profits in the following formula, viz., Business profits X Export turnover/total turnover to arrive at export profits on which the assessee claimed deduction under section 80HHC of the Act. The department treated the income from interest as income from other sources. However, the Tribunal included the said interest income in the business profits. Hence, the department has come in appeal. Before 1-4-1992, distortion arose in determining export profits. The assessee used to inflate the business profits in the above formula by including receipts which had no relation with export activities. In cases of composite business, even where the component of local sales far exceeded sale proceeds from export activity, receipts like rent, interest, labour commission were included in business profits in the above formula. In the case of CIT v. Kantilal Chhotalal (IT Appeal No. 533 of 2000), this court has excluded such receipts from business profits. Further, this court has held that the amending law which came into force from 1-4-1992 by which clause (baa) has been introduced in the Explanation to section 80HHC, all such receipts which have no nexus with the export activity, stand excluded. This court has held that clause (baa) is clarificatory. Hence, interest income from fixed deposit cannot be included in business profits. Moreover, it may be mentioned that in the case of CIT v. Shirke Construction Equipments (IT Appeal No. 133 of 1999), this court has taken the view that business profits were required to be computed under the head 'profits and gains of business or profession' which, in turn, refers to section 28 to section 44D of the Act. In the case of CIT v. K.K Doshi & Co. (IT Appeal 77 of 2000), this court has once again reiterated that even before 1-4-1992, receipts which did not have nexus with the export activity cannot be included in business profits. In the present matter, we may mention that the assessing officer has recorded a finding of fact that the said interest income from fixed deposits was income from other sources. The Tribunal has not considered this aspect. In the case of Godavari Sugar Mills Ltd. (No. 2) v. CIT (1991) 191 ITR 359 (Bom), the Division Bench of this court took the view, on facts, that the assessee had no evidence to show that the monies on which the interest was earned were advanced in the course of the assessee's business and, therefore, the Division Bench held that the interest income was taxable as income from other sources. In this matter,

we are concerned with appeal under section 260A. In this matter, the assessing officer has recorded a finding of fact that the interest income was taxable as income from other sources. In the circumstances, such income cannot fall under the head 'profits and gains of business or profession'. Hence, such income cannot be included in business profits in the above formula. Therefore, on both counts, the appeal stands allowed. Even if it is held that interest income was a business income, the same was not includible in business profits in the above formula. On the other hand, as stated above, the assessing officer has held that the interest income was income from other sources. If that be the case, then such an income cannot come within the ambit of section 28 to section 44D. It cannot come under profits and gains of business. Therefore, looking at this matter from either point of view, the appeal needs to be allowed. 3. This appeal relates to the assessment year 1989-90. In the said assessment year, the assessee received Rs. 35,000 as interest on fixed deposits. The assessee claimed interest income and included the same in business profits in the following formula, viz., Business profits X Export turnover/ total turnover to arrive at export profits on which the assessee claimed deduction under section 80HHC of the Act. The department treated the income from interest as income from other sources. However, the Tribunal included the said interest income in the business profits. Hence, the department has come in appeal. Before 1-4-1992, distortion arose in determining export profits. The assessee used to inflate the business profits in the above formula by including receipts which had no relation with export activities. In cases of composite business, even where the component of local sales far exceeded sale proceeds from export activity, receipts like rent, interest, labour commission were included in business profits in the above formula. In the case of CIT v. Kantilal Chhotalal (IT Appeal No. 533 of 2000), this court has excluded such receipts from business profits. Further, this court has held that the amending law which came into force from 1-4-1992 by which clause (baa) has been introduced in the Explanation to section 80HHC, all such receipts which have no nexus with the export activity, stand excluded. This court has held that clause (baa) is clarificatory. Hence, interest income from fixed deposit cannot be included in business profits. Moreover, it may be mentioned that in the case of CIT v. Shirke Construction Equipments (IT Appeal No. 133 of 1999), this court has taken the view that business profits were required to be computed under the head 'profits and gains of business or profession' which, in turn, refers to section 28 to section 44D of the Act. In the case of CIT v. K.K Doshi & Co. (IT Appeal 77 of 2000), this court has once again reiterated that even before 1-4-1992, receipts which did not have nexus with the export activity cannot be included in business profits. In the present matter, we may mention that the assessing officer has recorded a finding of fact that the said interest income from fixed deposits was income from other sources. The Tribunal has not considered this aspect. In the case of Godavari Sugar Mills Ltd. (No. 2) v. CIT (1991) 191 ITR 359 (Bom), the Division Bench of this court took the view, on facts, that the assessee had no evidence to show that the monies on which the interest was earned were advanced in the course of the assessee's business and, therefore, the Division Bench held that the interest income was taxable

as income from other sources. In this matter, we are concerned with appeal under section 260A. In this matter, the assessing officer has recorded a finding of fact that the interest income was taxable as income from other sources. In the circumstances, such income cannot fall under the head 'profits and gains of business or profession'. Hence, such income cannot be included in business profits in the above formula. Therefore, on both counts, the appeal stands allowed. Even if it is held that interest income was a business income, the same was not includible in business profits in the above formula. On the other hand, as stated above, the assessing officer has held that the interest income was income from other sources. If that be the case, then such an income cannot come within the ambit of section 28 to section 44D. It cannot come under profits and gains of business. Therefore, looking at this matter from either point of view, the appeal needs to be allowed. 4. Accordingly, the appeal stands allowed with no order as to costs. 4. Accordingly, the appeal stands allowed with no order as to costs.