Cit vs M/S American Express India Pvt Ltd on 15 January, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ITA 691/2012, CM APPL. 2134/2025 & CM APPL. 2135/
CIT
Through:

versus

M/S AMERICAN EXPRESS INDIA PVT LTD .....Responden
Through: Mr. Mayank Nagi & Mrs.
Husnal Syali Nagi, Advs.
CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR
ORDER

% 15.01.2025

1. This appeal had come to be admitted by us on 28 November 2013 and when the following substantial questions of law came to be framed:-

> "(i) What are the test and parameters to be applied to declare comparables for the purpose of Rule 10D of the Income Tax Rules, 1961 and whether the findings of the tribunal for exclusion or inclusion of the comparables is in accordance with law?
>
> (ii) Whether AEGSC (STP) unit was eligible for deduction under Section 10A of the Income Tax Act, 1961?
>
> (iii) Whether the interest on housing loan given to the employees qualifies for deduction under Section 10B of the Income Tax Act, 1961?
>
> (iv) Whether Rs.1,62,60,000/- received by the respondent from the landlord as compensation is revenue receipt?"

2. Insofar as question (i) is concerned, learned counsels for parties are ad idem that no further enunciation would be required or merited This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:56 bearing in mind the scope of Rule 10D of the Income Tax Rules, 1961 1 having been duly settled by various decisions of this Court including Rampgreen Solutions P. Ltd. v. Commissioner of Income-tax2.

3. That then takes us to examine question (ii) and which pertained to the deductions under Section 10A of the Income Tax Act, 1961 3 which was framed. The said issue arises in the backdrop of the following facts.

4. During the year in question the respondent-assessee was stated to be carrying on functions through an export oriented unit which commenced its business on 01 June 1995. This unit undisputedly was availing of exemption under Section 10B right from Assessment Year4 1996-97. The respondent assessee is stated to have applied for setting up a unit under the STP Scheme on 10 January 2002 and it was pursuant to the permissions and approvals so granted that the AEGSC Unit came to be established. The AEGSC was stated to be engaged in operating as a call centre and performing other back office and support centre services.

5. The Assessing Officer 5 rejected its claim for exemption under Section 10A taking the position that the newly set up AEGSC Unit was merely a splitting up of the existing unit which was already availing benefits under Section 10B of the Act. The view so taken was however overturned by the Commissioner of Income Tax (Appeals)6 Rules [2015 SCC OnLine Del 11310] Act AY AO CIT(A) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:56 and which ultimately came to be affirmed by the Income Tax Appellate Tribunal 7. The Tribunal has in this regard rendered the following findings:-

> "36. We have heard both the parties and perused the material placed before us. We find that the CIT(A) has considered all the parameters which may be necessary for adjudicating whether the set up of the new unit is by way of splitting up of the existing business or it is a new set up over and above the existing set up. He has recorded the finding that the physical location of both the units is different. The nature of activities is different, separate license is obtained for the new unit, separate infrastructure. is created in the new unit, fresh funds have, been invested in the new unit and even after the setting up of the new unit, the turnover of the old unit has not reduced but, on the other hand, increased. During AY 2002-03, when no new unit was in existence, the turnover of bid unit was Rs. 129 crores which, after the setting up of the new unit, has increased to Rs. 294 crores in AY 2008-09. In view of the above facts, we do not find any infirmity in the order of learned CIT(A). The same is sustained and ground No. 3 of the Revenue's appeal is rejected."

6. Mr. Panda, learned counsel appearing in support of the appeal, has taken us through the provisions comprised in Section 10A and more particularly to the language in which clause (ii) of sub-section (2) stands couched and which speaks of splitting up or reconstruction of a business already in existence. According to Mr. Panda, most of the activities which were being undertaken by the AEGSC were also lines of business which were being pursued by the original unit. It was thus, according to Mr. Panda, a clear case of the splitting up of an existing business and which would thus fall foul of Section 10A(2)(ii).

7. Quite apart from the finding on facts which had come to be recorded by the Tribunal, including the establishment of that unit being at a physical location different from where the original unit had been established, a separate license and infrastructure having been Tribunal This is a digitally signed order.

 obtained and created and funds separately invested in the new unit, it had also significantly taken note of the quantum jump in the turnover of the old unit from INR 129 crores to INR 294 crores in AY 2008-09 after the setting up of the new unit. This clearly constituted an aspect which would have been sufficient to dispel the assumption of AEGSC being a splitting up of an existing unit.

8. On a more fundamental plane we find merit in the contention advanced by Mr. Nagi, learned counsel appearing for the respondents, who draws our attention to the judgment rendered by the Supreme Court in Commissioner of Income-tax v. Sociedade De Fomento Industrial Pvt. Ltd.8 and which, while reiterating the foundational principles culled out in Textile Machinery Corporation v. CIT9, had held as follows:-

> "1. In arriving at the conclusion that the respondent-assessee was entitled to the benefit of the provisions of section 10B of the Income-tax Act 1961, the Income-tax Appellate Tribunal, by its decision dated March 24, 2011, applied the tests which have been formulated in the decision of this court in Textile Machinery Corporation Ltd. v. CIT. These tests which have been formulated in the decision of this court are reproduced below:
>
> "(i) Manufacture or production of articles yielding additional profit attributable to the new outlay of capital in a separate and distinct unit is the heart of the matter.
>
> (ii) The fact that an assessee by establishment of a new industrial undertaking expands his existing business which he certainly does would not on that score, deprive him of the benefit. Every new creation in business is some kind of expansion and advancement.
>
> (iii) The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business,

> (iv) In order that the new undertaking can be said to be not (2022) 443 ITR 34 (1977) 107 ITR 195 (SC) This is a digitally signed order.

 formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit.

(v) The new unit may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business.

(vi) The products produced by the new unit may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new undertaking must be an integrated unit by itself wherein articles are produced.

(vii) The industrial unit set up must be new in the sense that new plant and machinery are erected for producing either the same commodities or some distinct commodities.

(viii) In order to deny the benefit the new undertaking must be formed by reconstruction of the old unit which can take place only when the assets of more than 20 per cent. value of new unit are transferred to the new unit from the old unit."

2. These tests have been reiterated in the decision in CIT v. Indian Aluminium.

3. In coming to the conclusion that the tests which have been formulated in the decision of this court in Textile Machinery Corporation Ltd. (supra) and reiterated in Indian Aluminium (supra) have been duly fulfilled, the Tribunal has entered specific findings of fact which are contained in paragraph 19 of the judgment which is extracted below:

> "19. It is thus submitted that the following facts will go to establish the assessee's claim that the unit formed in 1998 is a new undertaking :
>
> (i) the old unit approved under licence No. CIL/420 (1985), dated December 26, 1985 started producing iron ore in the year 1986 and was setup at a total cost of Rs. 3 crores having a capacity of producing 2 lakh tons of beneficiated ore per year ;
>
> (ii) in these circumstances it was considered imperative to install a new and more sophisticated beneficiation plant whose operations would result in production of higher ferrous content of about 63 per cent. plus ;
>
> (iii) accordingly the appellant applied for allowing it to import plant and machinery, pursuant to the approval from This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:56 the Ministry of Industry, an agreement came to be entered into between the appellant and the Government which recognized the setting up of the new unit and required that the unit should comply with fresh net foreign exchange earnings from the date of commencement of production of newly set up unit ;

(iv) pursuant to the approval the appellant set up and installed primary beneficiation section (PBS-II) and other related plant and machinery along with a slime treatment plant from a Swedish company, this plant is independently capable of producing ore of higher ferrous content, i.e., up to 63% to 65% with lower content of alumina and silica as required in the international market from the low-grade ore which is mined ;

(v) the new unit was formed in the financial year 1998-99 at a cost of over Rs. 30 crores and the capacity of this unit is 15 lakh tons compared to the earlier capacity of 2 lakh tons per annum in the old unit ;

(vi) a photograph taken of the new unit established in 1998-99 (copy enclosed at page 37 of paper book) clearly shows that the new unit is a completely different and independent unit which is located at a separate plot adjacent to the old unit;

(vii) a certificate given by the engineer of the appellant, one Mr. Y. S. Reddy establishes that the Greater Ferro-met Unit is capable of independently producing ore on its own of the desired ferrous content."

9. It is pertinent to note that the Supreme Court had clarified the aspect of expansion of an existing business and ultimately held that the true test would really not be whether it amounts to an expansion but as to the coming into being of a new and identifiable undertaking separate and distinct from the existing business. These tests when employed in the backdrop of the facts that have come to be recorded by the Tribunal, clearly convince us to hold that no interference is merited.

10. We also take in consideration a lucid explanation on splitting up and expansion of business units in the context of deductions which This is a digitally signed order.

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> "40. In Textile Machinery Corpn. Ltd. v. CIT., the Supreme Court had examined the exclusionary clause under Section 15C of the Indian Income Tax Act, 1922. Under the said Section, tax was not payable by an assessee on profits not exceeding 6% per annum on the capital employed in a new industrial undertaking. The said benefit was

> available to the new industrial undertaking, which was not formed by splitting up, or the reconstruction of business already in existence or by the transfer to a new business of building, machinery, or plant, previously used in any other business.
>
> 41. In the aforesaid context, the Court observed as under:
>
> "...No hard and fast rule can be laid down. Trade and industry do not run in earmarked channels and particularly so in view of manifold scientific and technological developments. There is great scope for expansion of trade and industry. The fact that an assessee by establishment of a new industrial undertaking expands his existing business. which he certainly does. would not. on that score. deprive him of the benefit under Section 15-C. Every new creation in business is some kind of expansion and advancement. The true test is not whether the new industrial undertaking connotes expansion of the existing business of the assessee but whether it is all the same a new and identifiable undertaking separate and distinct from the existing business. No particular decision in one case can lay down an inexorable test to determine whether a given case comes under Section 15-C or not. In order that the new undertaking can be said to be not formed out of the already existing business, there must be a new emergence of a physically separate industrial unit which may exist on its own as a viable unit. An undertaking is formed out of the existing business if the physical identity with the old unit is preserved. This has not happened here in the case of the two undertakings which are separate and distinct."

42. In Bajaj Tempo Ltd., Bombay v. CIT- a decision rendered in the 2024 SCC OnLine Del 8508 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:57 context of the exclusionary clause under Section 15C of the Indian Income Tax Act, 1922 which is similar in its import as the exclusionary clauses (ii) and (iii) of sub-section (2) of Section 10A of the Act - the Supreme Court referred to the earlier decision of the Textile Machinery Corpn. Ltd. v. CIT and explained that the emphasis of the Court was on the expression "not formed" and the same was "construed to mean that the undertaking should not be a continuation of the old but emergence of a new unit". The Supreme Court further observed that "the initial exercise, therefore should be to find out if the undertaking was a new one. Once this test is satisfied then clause (i) should be applied reasonably and liberally in keeping with the spirit of Section 15C(1) of the Act".

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45. In the present case, the fact that NOIDA-II unit was engaged in the same business is not dispositive of the question whether the said undertaking does not fulfil the criteria as specified in Clauses

(ii) and (iii) of sub-section (2) of Section 10A of the Act. The Assessee had explained that it would set up the new undertaking to cater to its growth plans. It had hired a separate space from NOIDA (New Okhla Industrial Development Authority) for establishing the said unit. It had made an investment in the additional assets for setting up the said unit and resultantly not only the Assessee's gross block but also the seating capacity had doubled. As noted before, the Assessee's claim that the sitting capacity had increased from 300 seats to 700 seats with the establishment of the new undertaking (NOIDA-II unit) has not been controverted.

46. It is also material to note that the learned ITAT had in its order dated 27.03.2009 in respect of the AY 2003-2004 considered the question as to whether the new STP unit (NOIDA-II unit) was formed as a result of reconstruction of the existing business and had rejected the same. The relevant passage of the said order as set out in the written submissions filed on behalf of the Assessee - which was expressly admitted by the learned counsel for the Revenue during the course of the hearing - is reproduced below.....

47. Admittedly, the Revenue had accepted the aforesaid findings of the learned ITAT, which is evident from the fact that the Revenue had not appealed the said finding. Significantly, the Revenue had filed an appeal before this court (being ITA No. 71/2010) but had not proposed any question of law with regard to the ineligibility of the new STP unit (NOIDA-II unit) for deduction under Section lOA of the Act. The Revenue's appeal (ITA No. 71/2010) was dismissed by this court by an order dated 06.01.2011.

48. It is material to note that the benefit under Section lOA is in respect of an undertaking and not the assessee. In CIT v. Yokogawa India Limited, the Supreme Court had held as under:

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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:57 "17. From a reading of the relevant provisions of Section 10-A it is more than clear to us that the deductions contemplated therein are qua the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9-8-2000 which states in para 15.6 that, "The export turnover and the total turnover for the purposes of Sections 10-A and 10-B shall be of the undertaking located in specified zones or 100% export-oriented undertakings, as the case may be, and this shall not have any material relationship with the other business of the assessee outside these zones or units for the purposes of this provision".
>
> 18. If the specific provisions of the Act provide [first proviso to Sections 10-A(l); 10-A(l-A) and 10-A(4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous

> circular of the department (No. 794 dated 9-8-2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10-A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.

The somewhat discordant use of the expression "total income of the assessee" in Section 10-A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10-A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10-A as "total income of the undertaking".

49. The question whether a new undertaking has been set up, which is eligible for deduction under Section l0A of the Act is, therefore, most relevant in the initial year of operation. In CIT v. Heartland Delhi Transcription Services Private Limited, (2015) 228 Taxmann 326 (Del), this court had in the context of Section 10B of the Act - which includes similar exclusionary clauses - observed as under:

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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 07/02/2025 at 23:01:57 "10. Sub-section (1) refers to deduction of profit and gains of an undertaking. The deduction is to be allowed for a period of 10 years from the year in which undertaking begins to manufacture, produce etc. articles, things or computer software. The beginning and end points for claiming the deduction are stipulated. These have reference to the eligible undertaking. Sub-clause (ii) to Section 10B (2) incorporates a negative condition and states that the undertaking must not be formed by splitting up or reconstruction of business already in existence.

Clause (ii) refers to the date on which the undertaking mentioned in sub-section (1) is created or formed. On the date of formation, the undertaking should not violate the condition stipulated in clause (ii) i.e. that it should not be created by splitting up or reconstruction of a business already in existence. Clause (ii) does not have any reference to the period of 10 years stipulated in sub- section (1) to Section 10B, after an undertaking is formed or created without violation of clause (ii) to Section 10B(2). Clause (ii) to Section 10B(2) does not apply to the period, post formation of the undertaking, covered under sub-section (1), when the undertaking which at the time of formation meets the requirements of clause (ii) to Section 10B(2). The undertaking, of course meet the requirements and fulfil the condition that it manufactures or produces articles, things or computer software during the assessment year. The proviso equally supports the said interpretation as it also refers to the date of formation of the undertaking, for seeking benefit under Section 10B(l). The

requirements under clauses (ii) and (iii) in this manner do not relate to the subsequent period, i.e. post or after formation."

50. Clearly, once the Revenue accepts in the initial year of operation that a new undertaking has been set up and does not fall within the exclusionary clauses - that is, it is not formed by the splitting up, or the reconstruction of an extant business or by transfer to a new business of machinery or plant previously used for any purpose - the controversy must rest for future years as well. This is of course subject to the condition that no additional material or facts, which establish otherwise are found subsequently. It would be debilitating to the rule of consistency and certainty in the matter of taxation, if the question of eligibility of a unit is permitted to be re-agitated on the same set of facts despite the Revenue having accepted the findings - which are essentially factual findings - in favour of the Assessee in the initial year(s). It is difficult to accept that the Revenue could accept a set of facts in one year and yet challenge the same in another, without any change in circumstances or any new fact coming to light."

Consequently we answer question (ii) in the negative and in favour of the respondent-assessee.

11. We then travel to question (iv) and which deals with the receipts which fell in the hands of the respondent assessee from the landlord and as to whether the same was liable to be considered as a revenue receipt. We find that the Tribunal has while dealing with this question held as follows:

> "49. At the time of hearing before us, it is stated by the learned counsel that during the year under consideration, the assessee has taken on hire a premises for starting/STP unit. That there was delay in handing over the possession of the property by the landlord to the assessee. Therefore, he gave the compensation of Rs. 1,69,71,000/- which was in effect refund of rent paid for the period for which property was not ready for start of STP unit. The sum of Rs. 1,62,60,000/was the rent paid for the period prior to commencement of the STP unit and, therefore, the same was credited to prior period expenses and balance sum was reduced from the rent which was debited to profit & 'loss account. However, the Assessing Officer added the entire sum of Rs. 69,71,000/- as the income of the assessee from other sources.
>
> 50. On appeal, the learned CIT(A) allowed the relief to the extent of Rs. 7, 11,000/- i.e. the amount reduced from the rent which was claimed as deduction during the year under consideration. The Revenue has accepted the deletion of ~7, 11,000/- as there is no - ground in the Revenue's appeal against such deletion. That the nature of receipt" of Rs. 1,62,60,000/- is also similar to the receipt of Rs.7,11,000/-. That the entire compensation received from the landlord was by way of refund of the rent which was paid to him due to delay in handing over the possession of the said premises. That the rent paid by the assessee for the pre-commencement period was

shown as, pre-operative expenses. Therefore, refund of such rent was rightly credited to preoperative expenses account.

51. The learned DR, on the other hand, relied upon the orders of authorities below on this point and he stated that the learned CIT(A) has considered the entire issue and has already allowed the relief which was due to the assessee.

52. We have carefully considered the submissions of both sides and perused the material placed before us. We find force in the contention of the learned counsel when the rent was paid by the assessee, it was debited to rent account. Part of it was for the period prior to commencement of STP unit which was transferred to pre-operative expenses and the part of the rent which was for the period This is a digitally signed order.

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12. We find no justification to take a view contrary to what has been expressed by the Tribunal in this respect and thus find no justification to interfere with the views so expressed.

13. The last issue which warrants consideration is the interest paid by the respondent-assessee on housing loans which had been secured by its employees and whether it could qualify for deduction under Section 10B. We find that the Tribunal while dealing with this aspect has observed as follows:

"40. So far as housing loan to the employees is concerned, we agree with the finding of the learned CIT(A) that it was for the purpose of business. The loan was given to the employees during the course of carrying on of the assessee's business. He has also

> recorded a finding that there is a direct nexus between interest paid and interest received by the appellant. Such finding recorded by the ClT(A) with regard to housing loan to the employees has not been controverted before us. Therefore, we uphold the same."

14. However, and it becomes pertinent to note that before the CIT(A) the contentions on this aspect clearly appear to have This is a digitally signed order.

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> "21.2 I have carefully considered the submissions made by the appellant, and the decision of the Hon'ble ITAT in appellant's own case for Assessn1ent Year 2000-2001 in which it is held as follows:
>
> "The deposits were made out of business funds of the assessee which were temporarily available. Thus the interest receipt has direct nexus with interest payment. Hence, in view of the aforesaid decisions, since interest income is less than interest expenses no part of the same is to be excluded while computing profits of business eligible for deduction under section 10B of the Act."

(para 29 of the order)"

> In my view and also respectfully following the e order of the ITAT, there is direct nexus between interest paid and interest received by the appellant and hence, the ground of appeal is allowed. Accordingly, the interest on income tax refund on housing loans given to employees is to be netted off against the interest payment and since the interest received by the appellant is less than the interest expense for the year under appeal, no part of the interest on income-tax refund of Rs. 24,84,307 and Rs 1,27,741 on housing loans given to employees is to be excluded while computing profits of business eligible for deduction under section 10B of the Act."

15. As is evident from the above the CIT(A) has essentially proceeded on the basis that since the interest expense incurred stood netted off against interest received, the expense so incurred while servicing housing loans obtained by employees would be liable to be excluded while computing profits of businesses eligible for deductions under Section 10B of the Act.

16. Mr. Panda learned counsel would contend that the expense incurred while servicing housing loans of employees cannot possibly be said to be an expense connected with the business of the enterprise. He submitted that all deductions which are or could be claimed either under Section 10A or Section 10B are concerned with profits and gains that are derived by an undertaking. He also referred for our consideration what he describes to be a contrarian view taken by the This is a

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> "20. Accordingly, the profits of the business in the given context would mean the profits of the business carried on by the undertaking to which the provisions apply. It means that in this background we are required to decide whether the interest income earned by the assessee from the housing loans advanced to its employees would also form the part of the profits from the business carried on by the undertaking for allowing deduction under section lOA of the Act. Undisputedly, the assessee undertaking is in the business of providing technology based solution to eFund groups entities and third party customers mainly outside India and these services are rendered through three units registered under Software Technology Parks of India ("STPI") scheme. Hence, the interest income earned by the assessee on the housing loans given to its employees would certainly not form part of the profits of the assessee undertaking as there is no nexus between the activity carried on by the assessee and the income earned by way of interest on the housing loans advanced to its employees. In view of the discussion hereinabove the assessee is not eligible to claim deduction under section lOA of the Act on the income earned from the interest on the housing loan advanced to its employees. The decision of the Income-tax Appellate Tribunal (Jodhpur Bench) in the case of Sharda Gums and Chemicals [2001] 76 ITD 282 relied upon by the learned authorised representative for the assessee does not apply to the facts and issue under consideration first because the case law relates to the deduction claimed under section 80HHC of the Act on the interest earned by the assessee on FDRs whereas in the instant case we are concerned with the deduction claimed under section lOA of the Act in respect of interest earned by the assessee on housing loans advanced to the employees; second because in sub-section (3) of section 80HHC of the Act while computing the profits in the working formula for arriving at the export profits the words used are "profits of the business", whereas, while working out the same for deduction under section lOA in subsection (4) of the Act, the words used are "profits of the undertaking". The provisions of section lOA and section 80HHC of the Act cannot, therefore, be held to be at par."

17. Insofar as this aspect is concerned, we note that the Tribunal has disposed of the question by broadly observing that the CIT(A) had 2008 SCC OnLine ITAT 55 This is a digitally signed order.

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expenditure could not be taken into consideration while computing profits and gains derived by an undertaking. Insofar as this question is concerned and since the Commissioner also canvasses for our consideration the view that was expressed by the Tribunal in eFunds, we are of the considered opinion that this question would merit being remanded to the Tribunal for consideration afresh.

18. Accordingly, while we answer questions (ii) and (iv) in the negative and uphold the views expressed by the Tribunal, we allow the appeal in part. Insofar as question (iii) is concerned, the matter shall, in consequence stand remitted to the Tribunal for consideration afresh.

19. All rights and contentions of respective parties in this respect are kept open.

YASHWANT VARMA, J HARISH VAIDYANATHAN SHANKAR, J JANUARY 15, 2025/kk This is a digitally signed order.