Interest earned from inter-corporate loans and foreign currency account are eligible for sec. 10B relief

Summary – The High Court of Karnataka in a recent case of Motorola India Electronics (P.) Ltd., (the Assessee) held that in view of substitution of sub-section (4) of section 10B by Finance Act, 2001, with effect from 1-4-2001, an assessee is entitled to claim exemption on interest income earned from inter-corporate loans and deposits lying in EEFC account.

Facts

- The assessee-company was engaged in business of export of computer software. It claimed exemption under section 10B in respect of interest income derived from inter corporate loans and deposits lying in EEFC account.
- The Assessing Officer as well as the Commissioner (Appeals) rejected assessee's cliam.
- The Tribunal, however, allowed the claim raised by assessee.
- On revenue's appeal:

Held

- By Finance Act, 2001, with effect from 1-4-2001, the present sub-section (4) is substituted in the place of old sub-section (4). No doubt sub-section speaks about deduction of such profits and gains as derived from 100 per cent EOU from the export of articles or things or computer software. Therefore, it excludes profit and gains from export of articles. But sub-section (4) explains what is the profit derived from export of articles as mentioned in Sub-section (1).
- The substituted sub-section (4) says that profits derived from export of articles or things or computer software shall be the account which bares to the profits of the business of the undertaking and not the profits and gains from export of articles. Therefore, profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking.
- The profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. It is interesting to note that similar provisions are not there while dealing with computation of income under section 80HHC. On the contrary, there is specific provisions like section 80HHB which expressly excludes this type of incomes. Therefore, in view of the aforesaid provisions, it is clear that what is exempted is not merely the profits and gains from the export of articles but also the income from the business of the undertaking.
- In the instant case, the assessee is a 100 per cent EOU, which has exported software and earned the income. A portion of that income is included in EEFC account. Yet another portion of the amount is invested within the country by way of fixed deposits, another portion of the amount is invested by

way of loan to the sister concern which is deriving interest or the consideration received from sale of the import entitlement, which is permissible in law.

- Now the question is whether the interest received and the consideration received by sale of import entitlement is to be construed as income of the business of the undertaking. There is a direct nexus between this income and the income of the business of the undertaking. Though it does not partake the character of a profit and gains from the sale of an article, it is the income which is derived from the consideration realized by export of articles.
- In view of the definition of income from profits and gains incorporated in sub-section (4), the assessee is entitled to the benefit of exemption of the said amount as contemplated under section 10B of the Act. Therefore, the Tribunal was justified in extending the benefit to the aforesaid amounts.
- In the result, the revenue's appeal is dismissed.