IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

TAX APPEAL NO. 85 OF 2006

The Commissioner of Income Tax,
Nasik .. Appellant

Versus

M/s Nitiraj Engineering Pvt. Ltd.,
Dhule .. Respondent

Shri Alok Sharma, Standing Counsel for the Appellant.
Shri Subhodh P. Shah, Advocate for the Respondent.

CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.
DATE : 28TH APRIL, 2015.

PER COURT :

. This Court while admitting the appeal has framed following substantial questions of law :

i. Whether on the facts and in the circumstances of the case and in law the ITAT is justified in ignoring that for the purpose of Section 80-HH there must be a direct nexus between the activity and the earning of profit and gain which does not exist in the assessee's case?

ii. Whether on the facts and in the circumstances of the case and in law the ITAT erred in ignoring the fact that Annual Maintenance Contract Receipts have been earned by providing after Sales Services which are not directly connected with manufacturing activities but the same are only on account of after Sale Services and as such are not eligible for deduction u/s 80-HH and 80-I of the I T Act, 1961?

iii. The Tribunal erred in relying upon the judgment of the Tribunal in between the parties on this issue, the same is not res-judicata?

2. Mr. Sharma, the learned counsel for the appellant submits that, the deduction as laid down U/Sec. 80-HH of the Income Tax Act is permissible for manufacturing activity. The income in question is derived from maintenance and after sale service. As such, Sec. 80HH of the Income Tax Act is totally inapplicable. The learned counsel relies on the judgment of this Court in a case of **Commissioner of Income Tax Vs. Sterling Foods (Goa)** reported in ***(1995) 213 ITR 851***. So also the judgment of the Apex Court in a case of **Commissioner of Income Tax, Trivandrum Vs. Relish Goods** reported in ***AIR SC 1999-0-1640***. According to the learned counsel the Tribunal has committed an error in allowing the deduction U/Sec. 80HH and 80I of the I. T. Act. The learned counsel submits that, the finding is arrived at, that the income derived is from the maintenance and after sale service. In the light of that, the judgment of the Tribunal is erroneous and against the provisions of Sec. 80I of the I T Act. The same deserves to be set aside.

3. Mr. Shah, the learned counsel submits that, the respondent is engaged in manufacturing electronic/electrical weighing

scales/machines. There is direct nexus between after sale service and the manufacturing activity. Any manufacturer of an electronic waighing scale has to assure his client of constant after sale service upto their satisfaction and satisfaction of the Weights and Measures Department. He shall never be able to sell his products, unless such assurance is given. It is an ancillary activity of the company. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Commissioner of Income Tax Mumbai Vs. International Data Management Ltd.** reported in ***2003 (5) Mh.L.J. 237***. The learned counsel further submits that, the appellant in the appeal memo itself has admitted that the present appeal filed is below the monetary limits, as such appeal is not maintainable in view of the judgment of the Division Bench of this Court in a case of **Commissioner of Income Tax Vs. Camoo Colour Co.** reported in ***2002(3) Mh.L.J. 278*** and another judgment of this Court in **Tax Appeal No. 79 of 2007** with other connected appeals dated 29.07.2011.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. The benefit of Sec. 80HH is available where the gross total income of an assessee includes any profit and gains derived from an industrial undertaking or the business of hotel to which this section applies. In such a case the deduction from such profit

and gains of an amount equal to twenty per cent is permissible. The wordings include any profit and gain derived from an industrial undertaking. The Commissioner of Income Tax while considering the case put forth by the respective parties has observed as under :

> "7 I have carefully considered the facts of the case and the contentions raised have also studied the decision of the Hon'ble Supreme Court relied upon by the appellant. There is no doubt that in regard to qualify for deduction u/s. 80 HH it was held by the Court that the word "derive" is usually followed by the word "from", and it means "get" or trace from a sour; arise from, originate in; show the origin or formation of" and that .... "there must be .... a direct nexus between the profits and gains and industrial undertaking." From the evidence placed before me it is clear that only the appellant could have carried out the AMC received on sales of weighting machine and such specialized activity could not have been under taken by ordinary mechanics etc. and anybody attempting to avoid payment of Annual Maintenance Charges by going to a repairman otherwise than in the employee of the appellant could have laid himself open to the risk of losing the benefits of warranty. In view of this matter, I hold that the activity of Annual Maintenance Charges was directly related to, it flowed from the activity of manufacturing of weighing machines and therefore, with due respect I would disagree with my learned colleague and direct the A. O. to allow the benefit for the year under appeal as claimed.

6. The Tribunal has also considered the said aspect and has relied upon the judgment of this Court in a case of **International Data Management Ltd. Vs.**

Commissioner of Income Tax referred supra. The said finding of fact is arrived at concurrently by the Commissioner of Income Tax and the Tribunal and moreover the appellant in this appeal memo has pleaded that the amount involved in the appeal is Rs. 10,064/- and the same is below monetary limits prescribed by the law. This Court in a case of **Commissioner of Income Tax Vs. Camoo Colour Co.** and Income Tax Appeal No. 78 of 2007 with other connected appeals has observed that, CBDT Circular is binding on revenue and appellant ought not have filed the appeal.

7. Mr. Sharma, the learned counsel submits that, as the substantial questions of law are involved, the said circular is not applicable.

8. We have observed that, the Commissioner and Tribunal have concurrently observed about the income derived is from the maintenance and after sale service and that is ancillary activity and relying on the judgment of this Court in a case of **International Data Management Ltd. Vs. Commissioner of Income Tax,** we find that no substantial question of law arises and the questions framed are answered accordingly. The appeal stands dismissed. No costs.

[A. I. S. CHEEMA, J.] **[S. V. GANGAPURWALA, J.]**

bsb/April 15