IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2015

Coram

The Honourable Mr.Justice R.SUDHAKAR

and

The Honourable Mr.Justice R.KARUPPIAH

Tax Case (Appeal) Nos.1028 to 1030 of 2014

& M.P.Nos.1 and 1 of 2014

The Commissioner of Income Tax
Chennai.

.... Appellant in the all T.Cs

-vs-

M/s.Light Alloy Products Ltd.,
67, Chamiers Road,
Chennai - 600 028.

...Respondent in the all T.Cs

APPEALs filed under Section 260 A of the Income Tax Act against the order dated 01.08.2011 made in I.T.A.Nos.893to 895/Mds/2011 on the file of the Income Tax Appellate Tribunal, Chennai "A" Bench for the assessment years 2002-03, 2003-04 and 2004-05. Against the order of the Commissioner of Income Tax (Appeals)-III), Chennai dated 25/2/2011 and made in ITA. Nos.241/09-10 680/08-09 and 240/09-10 respectively against the assessment order of the Assistant Commissioner of Income-Tax, Company circle -II(4) Chennai -34 dated 31/12/08, 30/11/09 and 30/11/09 respectively for the Assessment year 2003-04, 2002-03 and 2004-05 respectively.

For Appellant : Mr.T.R.Senthilkumar
Standing Counsel

C O M M O N J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the deduction under Section 80IB on profits derived from industrial undertaking on job work contract is to be allowed?"

2. The brief facts of the case are as follows:

The assessee is engaged in the manufacture of automotive components made of aluminium castings. The assessee filed return of income for the respective assessment years claiming deduction under Section 80IB of the Income Tax Act on the works contract. The assessment was completed at the first instance and later it was reopened. Subsequently, after issuance of notice, the assessment was completed by the Assessing Officer denying the claim of deduction under Section 80IB and determined the total income by making additions.

3. Aggrieved by the said addition, the assessee preferred appeals before the Commissioner of Income Tax (Appeals) challenging the denial of deduction under Section 80IB of the Income Tax Act and also on other grounds. The Commissioner of Income Tax (Appeals), while dismissing the appeal on other grounds, allowed the appeal with regard to the claim of deduction under Section 80IA, holding as follows:

> "I have carefully considered the facts of the case and the various submissions made by the Ld. AR. I have also gone through the decisions relied on by the AO and AR. After considering the facts of the case and the precedents, I am of the considered opinion that the claim of the appellant has to be allowed. The perusal of the evidences furnished by the appellant reveal that the appellant has obtained requisite power connection from Tamilnadu Electricity Board for the manufacturing activities. The High Tension load is awarded for manufacturing activities only. From the photographs produced and the flow charts furnished it is very clear that the finished product of the appellant is distinct and different from the raw materials used. The appellant has also submitted that the goods are dispatched on payment of excise duty after the completion of manufacturing operations. The payment of excise duty will arise only on manufactured products which goes to prove that the appellant is engaged in manufacturing activity. Further, it has also been submitted by the appellant that the manufacturing process is done directly under the control and supervision of the appellant's employees. The appellant has also furnished a flow chart of

operating personnel with regard to its operations from which it is observed that all the staff including its supervisory staff are employees of the appellant. The Hon'ble jurisdictional High Court in the case of Taj Fire Works (supra) had clearly held that an assessee who is engaged on job work basis and who satisfies the test of manufacture by producing a new material which is different from the raw material is entitled to special deduction under section 80HH and 80I. The appellant has filed evidences in the form of flow charts, photographs of the various stages of manufacture, raw material used and final products which confirm the fact that the end product is distinct from the raw material used. In view of the above, and following various judicial precedents, I hold that the appellant is entitled to deduction under section 80IB. The AO is, therefore, directed to allow the deduction under section 80IB in computing the total income. This ground of appeal is allowed."

4. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), the Revenue filed appeals before the Tribunal, which dismissed the same confirming the order of the Commissioner of Income Tax (Appeals).

5. As against the order of the Tribunal, the Revenue pursued the matter before this Court by filing the above appeals.

6. Heard Mr.T.R.Senthil Kumar, learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

7. The short issue that arises for consideration in this appeal is whether sub-section (13) of Section 80IA of the Income Tax Act can be made applicable in respect of a claim made by the assessee in terms of Section 80IB of the Income Tax Act.

8. The respondent/assessee in this case claimed certain benefits under Section 80IB of the Income Tax Act. The Department denied the same on the ground that the nature of activity is job work and therefore, Explanation to sub-section (13) of Section 80IA would operate in respect of such a claim. The Commissioner of Income Tax (Appeals) as well as the Tribunal accepted the plea of the assessee and came to the conclusion that sub-section (13) of Section 80IA, which is relatable to enterprises falling under sub-section (4) of Section 80IA, was not applicable in a case of claim under Section 80IB of the Income Tax Act.

9. Assuming for a moment that certain clauses of Section 80IA was made applicable by virtue of sub-section(13) of Section 80IB, we find that the said provision is applicable only in respect of sub-section (5) and sub-sections (7) to (12) of Section 80IA and not in relation to sub-sections (4) and (13) of Section 80IA. Therefore, there cannot be any controversy on this issue, as the claim of the respondent/assessee does not fall under Explanation to sub-section (13) of Section 80IA of the Income Tax Act.

10. For better clarity, Section 80IA(13) and Section 80IB (13) read as follows:

> Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.
>
> 80-IA. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.
>
> ....
>
> (13) Nothing contained in this section shall apply to any Special Economic Zones notified on or after the 1st day of April, 2005 in accordance with the scheme referred to in sub-clause (iii) of clause (c) of sub-section (4).
>
> Explanation.—For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to a person who executes a works contract entered into with the undertaking or enterprise, as the case may be.
>
> Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.
>
> 80-IB. (1) Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to 41[(11), (11A) and (11B)] (such business being hereinafter referred to as the
> eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section

....
(13) The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible business under this section"

11. A plain reading of the above-said provision makes it clear that the provisions contained in sub-section (5) and sub-sections (7) to (12) of Section 80-IA alone are applicable and not sub-section (4) or (13) of Section 80-IA of the Income Tax Act.

12. We, therefore, hold that no question of law arises for consideration in these appeals. Accordingly, the above Tax Case (Appeals) stand dismissed. No costs. Consequently, M.P.Nos.1 and 1 of 2015 are also dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Income Tax Appellate Tribunal, Chennai "A" Bench
2. The Commissioner of Income Tax (Appeals), III, Chennai.
3. The Income Tax Officer (OSD), Company Circle II(4), Chennai.
4. The Assistant Registrar,
Income Tax Appellate Tribunal, Rajaji Bhavan, IV, Floor, Besant Nagar, Chennai.

+1 CC to Mr.T.R.Senthil Kumar, Advocate Sr.13772

CO-KSJ
ths : 20.03.2015

T.C.(A) Nos.1028 to 1030 of 2014
& M.P.Nos.1 and 1 of 2014

11.03.2015