

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

T.C.A.Nos.794 and 795 of 2015
and M.P.Nos.1 and 1 of 2015

Commissioner of Income Tax,
Madurai. Appellant in both Appeals

vs.

The Metal Powder Company Limited,
Maravankulam
Thirumangalam 625 706 Respondent in both Appeals

Prayer in T.C.A.No.794 of 2015: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order dated 21.02.2013, made in I.T.A.No.873/Mds./2012, on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, for the assessment year, 2007-08 against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, dated 31.1.2012 made in ITA NO.002/11-12, against the order of the Additional Commissioner of Income Tax Range-I, Madurai dated 30.12.2010 made in P.A.No.AAACT4262E Assessment year 2008-09.

Prayer in T.C.A.No.795 of 2015: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order dated 21.02.2013, made in I.T.A.No.874/Mds./2012, on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, for the assessment year, 2008-09 against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, dated 31.1.2012 made in ITA NO.0117/09-10, against the order of the Additional Commissioner of Income Tax Range-I, Madurai dated 29.12.2009 made in P.A.No.AAACT4262E Assessment year 2007-08.

For Appellant
in both appeals : Mr.M.Swaminathan

For Respondent
in both appeals : Mr.A.S.Sriram

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

Tax Case Appeal No.794 of 2015 has been filed against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 21.02.2013, passed in ITA No.873/Mds/2012 and

Tax Case Appeal No.795 of 2015 has been filed against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 21.02.2013, passed in ITA No.874/Mds/2012.

2. The brief facts, which are necessary for the disposal of the above cases, are as follows:-

The Assessee Company is engaged in manufacturing Metallic powder and generation of power through wind mill. The Company filed return of income for the Assessment Years 2002-2003, 2003-2004, 2005-2006 and 2008-2009. The return of income was processed, under Section 143(1) of the Income Tax Act, 1961, (hereinafter referred to as the "Act") and notice was issued, under Section 143(2) of the Act.

2.1. The Assessing Officer denied the deduction claimed under Section 80IA of the Act, on the ground that, once inter-se adjustment is made with losses in units, there was no possibility of deduction under Section 80IA of the Act.

2.2. The Assessee company incurred loss in aluminium alloy ingot plant and such loss had to be adjusted against the profit of pyro-technic aluminium powder unit and once the adjustment was carried out, the result was still a loss and hence, deduction under Section 80IA of the Act could not be allowed for the Assessment Years 2002-2003, 2003-2004 and 2005-2006.

2.3. In respect of the Assessment Years 2007-2008 and 2008-2009, the Assessing Officer had denied the claim of deduction, under Section 80IA, on the ground that, as per sub-section 5 of Section 80IA of the Act, the deduction shall be computed, as if such eligible business was the only source of income of the Assessee during the previous year, relevant to the initial assessment year, and to every subsequent assessment year. In the present case, the windmill division has huge unabsorbed depreciation, which are negative figure, for which Section 80IA of the Act cannot be allowed.

2.4. The Assessee has stated that separate accounts were maintained for the various units and that each unit had to be considered as a separate undertaking. According to the Assessee, deduction under Section 80IA or under Section 80IB of the Act would be available for the undertaking as a whole and there was no requirement for the setting off of the losses with the profits of various units. In view of the claims made by the Assessee, the Commissioner of Income Tax (Appeals) had directed the Assessing Officer to grant the deduction under Sections 80IA/80IB of the Act, for the Assessment Years 2002-2003, 2003-04, 2005-2006 and 2006-2007. Further, the Commissioner of Income Tax (Appeals) had allowed the appeal filed by the Assessee, with regard to the Assessment Years 2007-2008 and 2008-2009, following the decision of this Court made in Velayudham Spinning Mills (P) Ltd. vs. Assistant Commissioner of Income Tax, reported in (2012) 21 Taxmann.com 95 (Mad).

2.5. Aggrieved over the order of the Assessing Officer, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals), following the decision of this Court in the case of Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad) wherein the appeal filed by the Assessee has been allowed. According to the assessee, deduction under Section 80IA of the Act or Section 80IB of the Act was available for the undertaking as a whole and there was no requirement or setting off losses with profit of various units.

2.6. Accepting the contention of the assessee, the Commissioner of Income Tax directed the Assessing Officer to grant deduction under Section 80IA/80IB of the Act, for the assessment years 2002-2003, 2003-2004, 2005-2006, 2006-2007, 2007-2008 and 2008-2009.

2.7. Aggrieved by the orders of the Commissioner of Income Tax (Appeals), the Income Tax Department preferred appeals before the Income Tax Appellate Tribunal (ITAT), in ITA Nos.873 and 874/2012/Mds. The ITAT, by its order, dated 21.02.2013, had dismissed the appeals filed by the Department. Challenging the same, the Revenue has filed the present Appeals under Section 260A of the Act. The Revenue has filed two appeals, one in respect of the periods 2002-2003, 2003-2004, 2005-2006 and 2006-2007 and another in respect of the periods 2007-2008 and 2008-2009. The Appeal in Tax Case Appeal No.794 of 2015, has been filed for the Assessment Year 2002-2003 to 2006-2007, raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that each undertaking had to be considered separately for working out deduction under Section 80IA of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in confirming the order of the Commissioner of Income Tax, by holding that profits and gains earned by one priority industry cannot be reduced by the loss suffered by any other industry or industries owned by the assessee?"

The Appeal in Tax Case Appeal No.795 of 2015, has been filed for the Assessment Year 2007-2008 & 2008-2009, raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is entitled to deduction under Section 80IA of the Income Tax Act, 1961, without setting off the losses / unabsorbed depreciation pertaining to the windmill, which were set off in the earlier years, against the other business income of the assessee?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in following the decision of the Jurisdictional High Court in the case of Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, reported in (340 ITR 477) when the same is pending appeal before the Hon'ble Supreme Court in SLP (Civil) No.1136/11?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the initial assessment year in Section 80IA (5) of the Income Tax Act, 1961, would only mean the year of claim of deduction under Section 80IA of the Income Tax Act, 1961, and not the year of commencement of eligible business?"

3. The appellant has stated that the Tribunal has failed to appreciate the provision of law prescribed under Section 80IA of the Act, which stipulates that, to claim deduction under Section 80IA of the Act, loss of other undertakings, owned by the assessee, is to be set off in the profit of the unit for which deduction is claimed, and if there was any balance profits available, the assessee is entitled to claim deduction, under Section 80IA of the Act.

3.1. It has been further stated that the Tribunal had erred in holding that the losses and unabsorbed depreciation, which already stood set off against other income, during the earlier years, could not be carried forward and set off against profits or income of initial / subsequent years, in respect of windmills, in computing the deduction under Section 80IA of the Income Tax Act, 1961.

3.2. It has been further stated that, as per the provisions of Section 80IA (5) of the Act, the undertaking eligible for deduction under the said section should be treated as the only source of income, for computing the quantum of deduction and therefore, the Tribunal ought to have observed the fact that a restriction has been incorporated in sub-section 5 of Section 80IA of the Act, as it starts with a non-obstante clause and the same would prevail and the deduction, under section 80IA of the Act, has to be restricted, accordingly.

3.3. It is further pointed out by the appellant that the decision made by this court, in the case of Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, reported in (2012) 21 taxmann.com 95 (Mad), has been challenged before the Supreme Court of India and the matter is pending disposal. While so, the Tribunal ought not have followed the decision of this court, made in Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad).

4. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the decision, rendered in Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad), squarely applies to the facts of the present case; following the Velayudham Spinning Mills's case, cited supra, a Division Bench of this court had rendered a similar decision, in the case of Commissioner of Income Tax, Circle I, Tirupur vs. R.Yuvaraj, reported in (2015) 57 Taxmann.com 252 (Madras). In view of the above decisions, the Appeal filed by the Revenue is liable to be dismissed as it is devoid of merits.

5. We have heard the learned counsels appearing on behalf of the appellant, as well as the respondent. We have also perused the records available before this court.

6. It is noted that the facts and circumstances based on which the present appeals had arisen are similar to those which had already been decided, by this Court, in the cases cited supra. Further, in a batch of cases in CIT Vs. Eastman Exports Global Clothing (P) Ltd. (2015) 229 Taxman 449/54 Taxmann.Com 408 (Madras), this court had followed the decision rendered in Velayudham Spinning Mills (P) Ltd vs. Assistant Commissioner of Income Tax, (2012) 21 taxmann.com 95 (Mad) and had decided the matter in favour of the assessee and against the Revenue. Taking note of the above said decisions, we are constrained to reject the present appeals filed by the Revenue. Thus, the substantial questions of law raised in the appeals are answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal
Madras 'B' Bench, Chennai.

2. The Commissioner of Income Tax, Madurai.

3. The Commissioner of Income Tax, (Appeals)-I, Madurai.

4. The Additional Commissioner of Income Tax, Range-I,
Madurai.

+ 2 ccs to Mr.M.Swaminathan, Advocate Sr.60475

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