IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NO. 1182 OF 2007

M/s.Paridhan Exports
No.15, Race Course Road
Guindy, Chennai 600 032. .. Appellant

- Vs -

The Asst. Commissioner
of Income Tax, Chennai – IV
Chennai. .. Respondent

Appeal filed under Section 260A of the Income Tax Act against the order dated 27.07.06 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, made in ITA No.505/Mds/2003.

For Appellant : Mr. Philip George

For Respondents : Mr. T.R.Senthil Kumar

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Mr. T.R.Senthil Kumar, learned standing counsel for the respondent/Department is directed to take notice for the respondent/Department.

2. Aggrieved by the order of the Tribunal in partly allowing the appeal filed by the assessee/appellant, the appellant/assessee is before this Court by filing the present appeal. This Court, vide order dated 17.12.07, while admitting the appeal, framed the following substantial questions of law for consideration :-

> *"1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not deciding the issue on merits in respect of the interest income by remitting back the issue to the file of the Assessing Officer?*
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> *2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in remitting back the issue of interest income to the Assessing Officer by basing its decision on wrong presumption and premises, without considering the categorical findings of the Commissioner of Income Tax (Appeals), which was based on materials, reasoning and supportive case law on the issue?*
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> *3) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the interest income derived by the appellant forms part of its 'Business Income' since the assessee is also engaged in the business of money lending?"*

3. The facts, in a nutshell, are as hereunder :-

The appellant/assessee is engaged in the business of manufacture and export of garments and is also carrying on business of money lending. For the assessment year 1998-1999, the appellant/assessee filed return of income on 2.11.98 declaring the total income as 'NIL'. The return of income was processed under Section 143 (1) of the Income Tax Act on 14.8.00. Notice under Section 148 of the Act was issued on 24.8.00 and assessment was reopened. The appellant/assessee, by letter dated 4.10.00, requested the respondent/Department to treat the original return of income filed in response to notice under Section 148. The details as to whether the interest received on income would fall under the head 'Business Income' or 'Income from other sources' was considered by the Assessing Officer in the following manner :-

> *"2. The assessee firm showed interest income of Rs.94,39,517/= in the P&L A/c. The firm deducted 90% of the interest income from the profit for the purpose of claiming the 80HHC deduction. The firm was asked to explain why the interest income shown by the assessee in the P&L A/c should not be treated as income from the other sources and why the benefit u/s 80HHC should not be disallowed on the interest income as interest income is not derived from export business. The authorised representative of the assessee stated that money lending is one of the business activity of the firm. The firm received interest from various banks on the deposits and also interest from various parties. Therefore he stated that this should be treated as business income. The explanation of the authorised representative is considered. Here the question whether the interest income received by the assessee is profit from the export business or not for the purpose of 80HHC. The explanation of the authorised representative is not acceptable in view of the following decisions :-*
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> *1) ITAT "A" Bench, Madras decision in ITA No.2680/Mds/94 dated 7.11.2000 for the assessment year 1991-92.*
>
> *2) Madras High Court decision in the case of CIT - Vs -*

Pandian Chemicals Limited (233 ITR 497).

3) Kerala High Court decision in the case of Nanji Topanbhai & Co. - Vs - Asst. Commissioner of Income Tax (243 ITR 192).

4) Madras High Court decision in the case of South India Shipping Corporation Ltd. - Vs - CIT (240 ITR 24).

5) Kerala High Court decision dated 13.11.2001 in the case of CIT - Vs - Parekh Brothers (253 ITR 43).

6) Kerala High Court decision dated Nov., 20, 2001 in the case of CIT - Vs - Jose Thomas reported in 253 ITR 553.

ii) in the case of CIT - Vs - Pandian Chemicals Limited the expression 'derived from' has been explained to give a narrower meaning than the term 'attributable to'. In the case of 243 ITR 192 it has been held as under :-

> *"Under section 80HHC of the Income-tax Act, 1961, the assessee who is engaged in export business is allowed, in computing the total income, a deduction out of the income derived from the export of such goods. Unless the assessee is able to show that the income received by way of interest from the fixed deposit is derived from the export business, it will not be entitled to claim deduction under section 80HHC in respect of it."*

iii) In the case of 240 ITR, the Madras High Court has held that :

"The fact that a person carries on business does not lead to the inference that all income received by such a person is business income. The same assessee can have income which may require to be classified under more than one head. It is the manner in which the income is derived that is relevant and not merely the fact that the person is engaged in a business or in a profession.

Interest received by the company which carries on business, from bank deposits and loans could only be taxable as 'Income *from other sources' and not as 'business income'."*

4. To arrive at a substantive finding, the Assessing Officer primarily placed reliance on the decision reported in ***CIT – Vs – Pandian Chemicals Ltd. (233 ITR 497)*** and the decision of the Kerala High Court in ***Nanji Topanbhai & Co. - Vs – Asst. Commissioner of Income Tax (243 ITR 192)*** and rendered a definite finding against the assessee, treating the interest received from money lending business as 'Income from other sources' against which the assessee filed appeal to the CIT (Appeals).

5. The CIT (Appeals) considered the issue as to whether the appellant is carrying on business of money lending or not and if it is found that he is also engaged in the business of money lending, whether the assessee will be entitled to the deduction as claimed by him. The CIT (Appeals) relied upon the decision of the Supreme Court in ***Commissioner of Income Tax – Vs - Sun Engineering Works (P) Ltd. (1992 (198) ITR 297)*** and held in favour of the appellant/assessee. The relevant portion of the order of the CIT (Appeals) is quoted hereinbelow for better clarity :-

> *"Therefore, adopting the approach enunciated by the decision of Sun Engineering Work (P) Ltd. - Vs - CIT (198 ITR 297) it can be stated that the decisions relied upon by the assessing officer has to be read in the context of what is stated just prior thereto. The Courts have said that if an assessee is not engaged in the business of advancing money for earning interest the income so earned will be treated as '*

Income from Other Sources'. Whereas if the assessee is engaged in the business of advancing money the interest so received will be assessable as "Business Income" only. It is also a fact that in the business of money lending the money is stock in trade and exploitation of stock in trade in any manner, if results in any income will be "Business Income". This view is supported by the decision of the Supreme Court in the case of C.E.P.T. - Vs - Lakshmi Silk Mills Ltd. (20 ITR 451). During the course of the appellate proceedings, the assessing officer has brought to my notice that during the year under consideration, the appellant has advanced the money only to two depositors and therefore it cannot be said that the appellant is carrying on the business of money lending. It is a well known fact that turnover of business cannot be a whole criteria in deciding the issue. for the last several years the appellant is advancing the money to several persons and the department has also accepted that the appellant's interest income as 'Business Income'. It will not be proper to treat the income from interest received as 'Other Sources Income'. My predecessor in the case of M/s.P.S.Apparels in ITA No.5/2001-2002 dated 24.1.2002 has held that the interest income earned by the appellant's firm constituted the business income. Under the circumstances the assessing officer is directed to treat the interest income as 'Business Income' and compute and allow the deduction u/s 80HHC accordingly. This ground of appeal is therefore allowed."

6. Aggrieved by the said order of the CIT (Appeals), the Department pursued the matter before the Tribunal. The Tribunal, it is seen, without understanding the scope of the order of the Assessing Officer or that of the

CIT (Appeals), came to hold that the authorities below did not give any definite finding as to whether income earned by way of interest from money lending business could be construed to be business income or otherwise. For better clarity, the relevant portion of the order of the Tribunal is extracted hereinbelow :-

> *"8. We find that in the orders of the authorities below, no finding has been given as to whether the interest income of the assessee can be construed to be business income on the facts and circumstances of the case. While the Assessing Officer has gone on the premise that interest income cannot be export income, the learned Commissioner of Income Tax (Appeals) has dealt with the premise that interest can be business income.*
>
> *9. However, in our opinion, this has to be ascertained from the facts and records of the case. Hence, in the interest of justice, we remit this issue to the files of the Assessing Officer to give a finding on the facts of the case as to whether the interest income of the assessee can be considered to be his business income. If that be so, 90% of the interest will have to be reduced for computation of deduction u/s 80HHC in accordance with the provisions of Explanation (baa) to Section 80HHC. The assessee should be given adequate opportunity or being heard."*

Aggrieved by the order of the Tribunal, the assessee/appellant is before this Court by filing the present appeal.

7. Learned counsel for the appellant/assessee vehemently contended that the Tribunal has grossly erred in holding that no finding has been given

by the authorities below as to whether the interest income could be treated as business income or not. It is pointed out by the learned counsel for the appellant/assessee that there is a clear finding by the CIT (Appeals) that the interest earned by the assessee is business income, as it is evident from the record that the assessee is in the business of money lending for several years and the same has also been accepted by the department. Further, it is urged that the activity of advancing money for earning interest constitutes business income and all the ingredients for treating the interest earned from money lending business as business income are satisfied in this case. Further, the assessee had been carrying on the business of money lending for the past several years, and all along the department has accepted the said income under the head 'Business'. Therefore, for the first time, the Department cannot now take a stand and say that the interest earned from money lending business should be treated under the head 'Income from other sources'. It is therefore submitted that the CIT (Appeals), taking into consideration all the materials placed before him has come to the right conclusion that the interest earned from money lending business should be assessed under the head 'Business Income' and the finding of the Tribunal that there is no finding on the said aspect by the authorities below is liable to be interfered with.

8. Heard Mr.Philip George, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned counsel appearing for

the respondent/Department and perused the materials available on record as also the decisions relied on by the learned counsel for the appellant/assessee.

9. A cursory glance at the order of assessment as also the order of the CIT (Appeals) reveals that the Assessing Officer has taken a view that the interest earned from money lending business is 'income from other sources', whereas the CIT (Appeals) has taken it under the head 'Business Income'. Both the authorities, as is evident from their orders, have given their finding for treating the said income under the relevant heads. However, the Tribunal has lost sight of the said findings recorded by the authorities below, and in its order has stated that no finding has been rendered on this issue on facts by the authorities below, which is factually incorrect.

10. In such view of the matter, this Court is not inclined to decide the issue at this point of time on the questions of law raised above, since we find that the Tribunal had failed to go into the relevant portion of the orders of the Assessing Officer and CIT (Appeals) and come to a definite finding as to which view, i.e., whether the view of the Assessing Officer or the view of the CIT (Appeals), in regard to bringing the interest income earned from money lending business under appropriate head, is right on the facts of the present case.

11. For the reasons afore-stated, we hold that the Tribunal has not decided the issue on facts and, therefore, no question of law arises for this Court to consider at this juncture. Accordingly, this Court remands the matter back to the Tribunal to decide the issue afresh on the basis of the materials available on record.

12. In the result, the appeal is disposed by way of remand back to the Tribunal to decide the issue afresh on the basis of the materials available on record. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (R.K.J.)
18.03.2015

Index : Yes/No
Internet : Yes/No
GLN

To

1. The Asst. Commissioner
   of Income Tax, Chennai – IV
   Chennai.

2. The Income Tax Appellate Tribunal
   'B' Bench, Chennai.

R.SUDHAKAR, J.
AND
R.KARUPPIAH, J.

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