IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.1.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).Nos.1310 and 1331 of 2007

Tamilnadu Chlorates Ltd.
17A, Vallabai Road
Madurai - 625 002. .. Appellant in TC.1310/2007

Pandian Chemicals Ltd.
17A, Vallabai Road
Madurai - 625 002. .. Appellant in TC.1331/2007

Vs.

The Commissioner of Income Tax
Madurai. .. Respondent in both appeals

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 17.10.2005 made in I.T.A.No.2183/Mds/2003 and dated 5.10.2005 made in I.T.A.No.2167/Mds/2003 for the assessment year 1999-2000 agaist theorder of the Commissioner of Income Tax (Appeals) 1 dated 4/9/200 made in ITA.Nos.326/01-02, 325/01-02, for the Assessment year 1999-2000 against the order of the Deputy Commissioner of Income TAx and Company Circle 1, Madurai dated 29/1/2002 made in PA.Nos.49-000-CN-4430, 49-042-9115, for the Assessment Years 1999-2000 respectively.

For Appellant : No appearance
For Respondent : Mr.M.Swaminathan Standing Counsel for Income Tax.

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The assessees have filed these appeals challenging the orders of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 17.10.2005 made in I.T.A.No.2183/Mds/2003 and dated 5.10.2005 made in I.T.A.No.2167/ Mds/2003 for the assessment year 1999-2000.

2. The appellant in T.C.(A) No.1310 of 2007 is the sister concern of the appellant in T.C.(A) No.1331 of 2007. T.C.(A) No.1310 of 2007 was admitted on the following questions of law:

(i) Whether the Tribunal was right in holding that electricity generated with the help of windmill by harnessing the wind energy into electricity energy would not amount to production or manufacture and that electricity so produced was also not an "article" or "thing" as referred in Sec.80HH?

(ii) Whether the Tribunal was right in rejecting the appellant's claim based on the decision of the Supreme Court in M.P. Electricity Board (XXV STC 1888) that "electricity" produced by windmill was "goods" by relying on the decision of Ferens Vs. O'Brien (11QBD)?

(iii) Whether the Tribunal was right in its conclusion that the assessee did not employ any employee merely because the appellant shared the expenses on salary in the windmill unit with its parent company i.e., M/s.Pandian Chemicals Ltd. and hence not eligible to claim deduction under Sec.80HH?

(iv) Whether the Tribunal was right in holding that the action of the Assessing Officer in setting off the carry forward depreciation against the current profits in determining the available profits of the windmill division u/s 80HH is covered by the decision of the Supreme Court in Motilal Pesticides (I) Ltd. v. CIT (243 ITR 26)?

T.C.(A) No.1331 of 2007 was admitted on the following questions of law:

(a) Whether the Tribunal was right in holding that electricity generated with the help of windmill by harnessing the wind energy into electricity energy would not amount to production or manufacture and that electricity so produced was also not an "article" or "thing" as referred in Sec.80HH?

1.

(b) Whether the Tribunal was right in rejecting the appellant's claim based on the decision of the Supreme Court in M.P. Electricity Board (XXV STC 1888) that “electricity” produced by windmill was “goods” by relying on the decision of Ferens Vs. O'Brien (11QBD)?

2.

(c) Whether the Tribunal was right in its conclusion that the assessee did not employ any employee merely because the appellant shared the expenses on salary in the windmill unit with its sister company i.e., M/s.Tamilnadu Chlorates Ltd. and hence not eligible to claim deduction under Sec.80HH?

3.

(d) Whether the Tribunal was right in raising the issue, on its own, as to whether the business of generation of power was “industrial undertaking”, when no such issue was raised by either party, and in deciding the issue impliedly against the assessee?

4.

(e) Whether the Tribunal was right in holding that the action of the Assessing Officer in setting off the carry forward depreciation against the current profits in determining the available profits of the windmill division u/s 80HH is covered by the decision of the Supreme Court in Motilal Pesticides (I) Ltd. v. CIT (243 ITR 26)?

3. In the orders under challenge passed by the Tribunal, it followed an earlier order dated 6.9.2005 passed in I.T.A.No.307/Mds/2000 in the case of the assessee in T.C.(A) No.1310 of 2007. Concededly, the said order dated 6.9.2005 passed in I.T.A.No.307/Mds/2000 by the Tribunal was the subject matter of challenge before this Court in T.C.(A) Nos.1360 of 2006 and batch cases and this Court, by judgment dated 23.7.2012, considered identical questions of law and remanded the matter to the Assessing Officer for reconsidering the claim of deduction in the light of the provisions of Section 80IA of the Income Tax Act.

4. It is stated that the learned counsel for the appellant has passed away. However, the learned Standing Counsel for the revenue fairly states that in the light of the decision of this Court dated 23.7.2012 in T.C.(A) Nos.1360 of 2006 and batch cases, these appeals many also be remanded to the Assessing Officer for considering the claim of deduction in the light of the provisions of Section 80IA of the Act.

In such view of the matter, these appeals are allowed and the orders passed by the Tribunal are set aside. The matter is remanded to the Assessing Officer for considering the claim of deduction in the light of the provisions of Section 80IA of the Act. No costs.

sasi

-s/d-
Assistant Registrar(LA)
Dt:6/2/2015

True Copy

Sub-Assistant Registrar

To:

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Chennai Bench "C", Chennai.

2. The Secretary, Central Board
   of Direct Taxes, New Delhi.

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

4. The Deputy Commissioner of Income Tax
   Company Circle I, Madurai.

+ 2ccs to Mr.M.Swaminathan, Sr.Standing Cousnel for Income TAx SR 4287

jp(co)
prk11/2