IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.7.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MS.JUSTICE K.B.K.VASUKI

T.C.(A).No.390 of 2008

The Commissioner of Income Tax
Chennai. ... Appellant

Vs.

Padma Damodaran ... Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 4.4.2007 made in I.T.A.No.991/Mds/2005 for the assessment year 2001-2002.

Against the Commissioner of Income Tax(Appeals)-V, Chennai dated 31.1.2005 and made in ITA.N.163/2004-05

Against the Order of the Income Tax Officer, Company Ward IV(1), Chennai dated 17.3.2004 for the Assessment Year 2001-02.

For Appellant : Mr.M.Swaminathan

For Respondent : Mr.M.P.Senthilkumar
for M/s.Philip George

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

The assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 challenging the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 4.4.2007 made in I.T.A.No.991/Mds/2005 for the assessment year 2001-2002 and the same was admitted on the following question of law:

> Whether the Tribunal was right in holding that the putting together of various bought out components in a kit and selling the same as “cable jointing kit” would amount to manufacture or production of

goods, entitling the assessee to the benefit of Section 80IA/80IB of the Income Tax Act?

2.1. In a nutshell, the facts are as under: The respondent/ assessee is an individual carrying on business of supplying Cable Jointing Kits to telecom industries. For the assessment year 2001-2002, the assessee claimed exemption under Section 80IB of the Act. However, the Assessing Officer held that the assessee is not entitled to claim deduction under Section 80IB of the Act, as the activity carried on by the assessee does not tantamount to manufacture and that the assessee has not fulfilled the conditions laid down under Section 80IB of the Act.

2.2. On appeal by the assessee, the Commissioner of Income Tax (Appeals) partly allowed the appeal holding that the assessee is entitled to exemption under Section 80IB of the Act only on the profit attributable to the sale component of Heat Shrinkable Sleeve from the total sales of cable jointing kits.

2.3. On further appeal by the assessee, the Tribunal following the decision of a Division Bench of this Court in the case of assessee's husband in Commissioner of Income Tax v. P.Damodaran, (2006) 282 ITR 466 (Mad), took the view that the assessee is entitled to claim deduction under Section 80IB of the Act.

3. Assailing the said order, the Revenue has filed this appeal on the questions of law, referred supra.

4. At the time of hearing, the learned Standing Counsel for the Revenue fairly conceded that the question of law raised in this appeal is squarely answered against the Revenue by the decision of this Court rendered in the case of assessee's husband in Commissioner of Income Tax v. P.Damodaran, (2006) 282 ITR 466 (Mad).

5. In Commissioner of Income Tax v. P.Damodaran, (2006) 282 ITR 466 (Mad), this Court has held as under:

> "6. We heard the arguments of the counsel. The assessee had claimed that he had started his factory at Pondicherry where manufacturing activity was done, whereas the stand of the Revenue was that, at Pondicherry, no manufacturing activity was carried on other than using the premises for correspondence and for despatching the goods by the assessee. The Tribunal had given a finding that the Assessing Officer had not made any enquiry to find out whether the assessee had carried out any manufacturing activity at Pondicherry, even after the matter was remanded back to his file.

Similarly, there was nothing to suggest that the Central Excise Authorities ever visited the assessee's factory to find out the veracity of his claim that the manufacturing activities were being carried out at his factory premises at Pondicherry. Also, it is found that the Central Excise authorities visited only the office premises of the assessee and examined certain documents. Hence, we find no justification in rejecting the assessee's claim for deduction under Section 80IAmerely relying on the observation of the Central Excise authorities. Further, it was a factual finding by the authorities below that the machineries installed in the premises and the raw materials utilised by the assessee, suggest that there was a production of article or thing for the purpose of using the same in the telecommunication industry. When the factual finding itself is that the asessee manufactured telephone cables joining kits, the assessee is entitled for benefit available under Section 80IA of the Act."

(emphasis supplied)

6. In the light of the above said decision, the question of law is answered against the Revenue and in favour of the assessee.

For the foregoing reasons, this appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

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

2. The Commissioner of Income Tax (Appeals) - V
   Chennai.

3. The Income Tax Officer
   Company Ward VI(1),

Chennai.

4. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Rajaji Bhavan, IV Floor,
   Besant Nagar, Chennai.

+1cc to Mr.Philip George, Advocate, S.R.No.38933
+1 cc to M/s.M.Swaminathan, Advocate, sr.38883 (30/09/2015)

T.C.(A).No.390 of 2008

KSJ(CO)
CA(02/09/2015)