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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2429 OF 2013
WITH
INCOME TAX APPEAL NO.304 OF 2014
WITH
INCOME TAX APPEAL NO.310 OF 2014

Commissioner of Income Tax ..Appellant
Versus
M/s. Gia Exports ..Respondent

....
Mr. Ashok Kotangale for the Appellant.
Mr. Nishant Gandhi i/b. Vipul Joshi for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 2ND MAY, 2016

P.C.:

1. Income Tax Appeal Nos.304 of 2014 and 310 of 2014 are not on board. Mentioned to point out that by our order dated 25th April, 2016 we had directed that the Income Tax Appeal Nos.304 of 2014 and 310 of 2014 be listed alongwith Income Tax Appeal No.2429 of 2013. Therefore, at the request of the parties, Income Tax Appeal Nos.304 and 310 of 2014 are also produced and being heard along with Income Tax Appeal No.2429 of 2013 which is listed on board.

2. These three appeals under Section 260A of the Income Tax Act(the

Act) challenge the common impugned order dated 19th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order relates to assessment years 2006-07, 2007-08 and 2008-09.

3. The Revenue urges the following identical question of law in all the three appeals as under:-

> *"Whether on the facts and the circumstances of the case and in law, the Tribunal is justified in confirming the order of CIT(A) to allow the deduction under Section 10A of the Income Tax Act, 1961?"*

Brief Facts

4. The respondent-assessee is engaged in manufacturing of gold jewellery for export in Special Economic Zone (SEZ) at Surat. It claimed the benefit of deduction under Section 10A of the Act in respect of its profits and gains from export of jewellery in all the three assessment years i.e. 2006-07, 2007-08 and 2008-09. On 25th September, 2008 a search and survey action was conducted on the respondent-assessee's premises. Consequent to the search, a notice under Section 153C of the Act was issued seeking to reassess the respondent for all the three assessment years. During the course of assessment proceedings, the Assessing Officer disallowed the respondent-assessee's claim for deduction under Section 10A of the Act. This essentially on the basis of the survey report filed

consequent to the survey conducted on 25th September, 2008. The survey report indicated that at the time of survey, the premises of the respondent-assessee were locked and when opened the plant and machinery was found to be rusted and not functioning. Besides there were no permanent employees in the unit nor there was any evidence of power consumption to support the huge production of jewellery and its exports which it claimed. In the above view, the Assessing Officer by three separate orders all dated 31st December, 2010 disallowed the deduction claimed under Section 10A of the Act and brought it to tax for A.Y. 2006-07, 2007-08 and 2008-09.

5. Being aggrieved by the orders of Assessing Officer, the respondent-assessee filed the appeals to the Commissioner of Income Tax (Appeals) (CIT(A)). All the three appeals relating to A.Y. 2006-07, 2007-08 and 2008-09 were heard together and disposed of by common order dated 12th September, 2011. On examination of facts, the CIT(A) found that the finding of the Assessing Officer that plant and machinery was not in working condition was without visiting the site, inspite of the fact the respondent had during the assessment proceedings requested the Assessing Officer to visit and verify that the machine was in a working condition. It was further found that all material which is required for the purpose of production/materials to meet its export obligations is under

the control of Customs and Central Excise Department. This is so as no item can be brought in and/or removed without the concurrence/approval of the Customs and Central Excise Department. It was found that there were supporting documents to indicate import of the raw material and export of the finished goods and receipt of consideration consequent to the export. It was also noted that on 25th September, 2008 when the survey took place, the respondent-assessee's unit was admittedly closed as in that assessment year i.e. A.Y. 2009-10 no manufacture took place as it did not have any export orders to meet. It is pertinent to note that all these documents in its support was submitted by the respondent before the Assessing Officer during the course of assessment proceedings. On the basis of the above finding of fact the CIT(A) found that the respondent-assessees's unit was entitled to the benefit of deduction under Section 10A of the Act in all the three assessment years i.e. A.Y. 2006-07, 2007-08 and 2008-09. Therefore the addition made for each of these assessment years by the Assessing Officer were deleted.

6. Being aggrieved by the order dated 12th September, 2011 of the CIT(A), the revenue-appellant carried the issue in appeal to the Tribunal. The Tribunal found that the entire basis of the proceedings before it is the report of the survey team which carried out survey on 25th September, 2008. The Tribunal found that report of the survey would be relevant to

determine the state of affairs during the assessment year 2009-10. It cannot reflect the state of affairs with regard to the respondent's unit at Surat during the three earlier assessment years i.e. A.Y. 2006-07, 2007-08 and 2008-09. There was no contemporaneous evidence of the facts as existing for any of the three assessment years i.e. A.Y. 2006-07, 2007-08 and 2008-09 to conclude that no manufacture and export had taken place. The impugned order further finds that the Assessing Officer does not record in the assessment orders that the survey party has conveyed to him that there was no export or import of items manufactured by the assessee from its premises in SEZ at Surat. It further observed the fact that the survey team noticed the irregularities at the time of survey but did not even remotely suggest any irregularities in the respondent-assessee's manufacturing activity for the earlier assessment years i.e. A.Y. 2006-07, 2007-08 and 2008-09. In the above view, the Tribunal by the common impugned order dismissed the Revenue's Appeal for all the three years.

7. We find that the Assessing Officer has come to the conclusion that no manufacturing activity was carried out by the respondent-assessee for the three earlier years i.e. A.Y. 2006-07, 2007-08 and 2008-09 on the basis of a survey carried out on 25th September, 2008. The result of this survey would be relevant if at all for examining the petitioner's claim, if any, under Section 10A of the Act for the assessment year 2009-10. It cannot

be the basis for denying the claim of benefit under Section 10A of the Act for the earlier assessment years 2006-07, 2007-08 and 2008-09 in the absence of any evidence to support the Revenue's contention of no manufacture during the three assessment years i.e. A.Y. 2006-07, 2007-08 and 2008-09. Both the CIT(A) as well as the Tribunal have on examination of the record rendered a finding of fact that the respondent is engaged in manufacturing activity under the control of Central and Excise Department. The document which was submitted during the assessment proceeding were not found to be lacking in any material particulars by the authorities. The impugned order also finds that payments for imports and receipts on account of exports were made through regular banking channels and with the due approval of the Customs and Central Excise Department.

8. In view of the concurrent findings of fact rendered by the CIT(A) as well as the Tribunal coupled with noting being shown to us to hold that the finding is in any manner arbitrary or perverse, no substantial question of law arises for our consideration.

9. Accordingly, Appeals are dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa