

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2016

CORAM

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

Tax Case Appeal No.4 of 2016

Commissioner of Income Tax
Company Circle-3(2)
Chennai.

.. Appellant

Versus

Ms.Vishnukumar Traders Private Limited
No.112B, Poonamallee High Road
Velappanchavadi
Chennai - 600 077

.. Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal Chennai 'C' Bench, dated 7.8.2015, in ITA No.1328/MDS/2015 arising against the Order of the Commissioner of Income-Tax(Appeals)-II, Chennai, dated 30.1.2015 in New ITA No.666/C17/A/-11/2013-14 and pertains to assessment year 2010-11, arising against the Order dated 01.03.2013 passed by the Assistant Commissioner of Income Tax, Company Circle III(4), Chennai-34, for the assessment Year 2010-11.

For Appellant : Mr.M.Swaminathan

J U D G M E N T

(Judgment of the Court was made by M.Jaichandren,J)

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai, dated 7.8.2015, made in I.T.A.No.1328/Mds./2015.

2. The brief facts of the case, necessary for the disposal of the appeal are as follows:

2.1) The assessee had filed its return of income, for the assessment year 2010-2011, on 21.9.2010, declaring a total income of Rs.1,29,46,970/-. The return was processed, under Section 143(1) of the Act and a notice, under Section 143(2) of the Act, had been issued and served on the assessee. During the course of scrutiny assessment proceedings, it had been observed that the assessee had claimed deduction, under Section 80IA(4) to the tune of Rs.66,61,342/-. A show cause notice, dated 7.2.2013, had been issued to the assessee and the assessee had been asked to explain as to why Section 80IA(5) of the Act should not be applied in its case. The explanation of the assessee had been placed on record. The assessee had relied on the decision of this Court, in Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368). The assessing officer had invoked Section 80IA(5) of the Act, since the jurisdictional decision of this Court had not been accepted by the Department and an appeal is pending before the Supreme Court. The assessment had been completed, on 1.3.2013, under Section 143(3) of the Act.

2.2) Aggrieved by the assessment order, the assessee company had preferred an appeal before the Commissioner of Income Tax (Appeals), in old I.T.A.No.1852/13-14 and new ITA No.666/CIT(A)-III/2013-14. The Commissioner of Income Tax (Appeals), by his order, dated 30.1.2015, had allowed the appeal of the assessee relying on the decision of this Court, in Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368).

2.3) Aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the department had preferred an appeal before the Income Tax Appellate Tribunal, in I.T.A.No.1328/Mds./2015. The Tribunal, by its order, dated 7.8.2015, had dismissed the appeal filed by the department, following the decision of this court, in the case of Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368).

2.4) Challenging the order of the Tribunal, dated 7.8.2015, the department has filed the present Appeal, before this Court, under Section 260A of the Act, raising the following substantial questions of law.

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was in right in allowing the deduction under Section 80IA of the Income Tax Act, when there is no positive income from the eligible unit during the initial assessment year?

2. 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 following the decision of the jurisdictional High Court in the case of Velayudhaswamy Spinning Mills (340 ITR 477) when the Department appeal against the said order is pending before the Hon'ble Supreme Court in SLP (Civil) No.1136/2011?

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

3. The learned counsel appearing on behalf of the department had raised the following grounds:

"A. The order of the Appellate Tribunal is erroneous in law and opposed to the facts and circumstances of the case.

B. The Income Tax Appellate Tribunal erred in holding that the assessee is entitled to deduction under Section 80IA.

C. The Income Tax Appellate Tribunal erred in allowing the deduction under Section 80IA of the Income Tax Act when there is no positive income from the industrial undertaking during the financial assessment year.

D. The Income Tax Appellate Tribunal ought to have appreciated that as per section 80IA (5) the undertaking eligible for deduction u/s 80IA should be treated as only source of income for computing the quantum of deduction.

E. The Income Tax Appellate Tribunal erred in following the decision of Jurisdictional High Court in the case of M/s.Velayuthasamy Spinning Mills when the same is in appeal before the Hon'ble Supreme Court.

F. The Income Tax Appellate Tribunal ought to have observed that since sub-section 5 of Section 80IA starts with a non-obstante clause, the restriction put in sub-section 5 will prevail and deduction under 80IA has to be restricted accordingly.

G. The Income Tax Appellate Tribunal ought to have appreciated that as per provisions of section 80IA(5) the undertaking eligible for deduction should be treated as only source of income for computing the quantum of deduction."

4. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the decision rendered in Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368)., squarely applies to the facts of the present case. He had further submitted that a Division Bench of this court had rendered a similar decision, in Commissioner of Income-Tax, Circle-I, Tirupur Vs. R.Yuvaraj, [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 the 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 Appeal 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 Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368), 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 dismiss the present Appeal filed by the Revenue, confirming the order passed by the Tribunal, dated 7.8.2015.

Accordingly, the questions of law raised in the appeal are answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal `C' Bench,
Chennai.

2.The Commissioner of Income Tax, Appeals-II,
Chennai.

3.The Assistant Commissioner of Income Tax
Company Circle-III (4),
Chennai-34.

+1cc to M/s.M.Swaminathan, Advocate, S.R.No.2660 (19.05.2016)

Tax Case Appeal No.4 of 2016

rsk(CO)
srg(17/02/2016)

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