

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ITTA.NO.157 OF 2016

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred by the revenue against the order passed by the Income Tax Appellate Tribunal, Hyderabad (Tribunal) in ITA.No.729 of 2015 dated 04.09.2015 for the assessment year 2009-10.

The respondent-assessee, an Indian company engaged in the business of providing infrastructure facilities including developing, operating and maintenance of industrial park, filed its return of income on 17.09.2009 claiming deduction under Section 80IA(4)(iii) of the Act for a sum of Rs.33,36,38,229/-. The assessing authority granted them the benefit of deduction under Section 80IA(4)(iii) of the Act. The said order of assessment was revised by the Commissioner of Income Tax under Section 263 of the Act. In his order, the Commissioner of Income Tax observed that the assessee had claimed deduction under Section 80IA(4)(iii) of the Act for four units in the industrial park from out of a total of five units; from out of the four units, the assessee had claimed deduction in respect of the unit named Capella; the assessing authority had not verified whether the assessee had violated the conditions laid down in notification No.244/07 dated 28.09.2007 issued by the CBDT; and, in the absence of the conditions stipulated in the notification being complied with, the assessee was not entitled to claim deduction under Section 80IA(4)(iii) of the Act. Paragraph No.4 of the CBDT notification stipulated that no single unit should occupy more than 50% of the allocable industrial area and, on the ground that the respondent-assessee had occupied more than the prescribed 50%, the assessment order was revised by the Commissioner of Income Tax.

On the assessee questioning the revisional order in appeal, the Tribunal, in the order under appeal, noticed the distinction between

automatic approval and non-automatic approval in the scheme formulated by the Central Government. On a detailed analysis of the conditions prescribed in the Industrial Park Scheme, 2002 issued by the Central Government, the Tribunal held that clause (f) of the automatic approval rule stipulated that no single unit shall occupy more than 50% of the allocable industrial area of the industrial park; such a condition was absent in the non-automatic approval rule; and, in the absence of any such condition being prescribed in the non-automatic approval rule, and as it was not in dispute that the assessee had submitted their application under the non-automatic approval category, the revisional authority had erred in denying them deduction under Section 80IA(4)(iii) of the Act on the erroneous premise that, since the assessee had occupied more than 50% of the industrial space, they had violated the conditions imposed under the scheme. The Tribunal relied on an order passed by a coordinate Bench of the Tribunal in **L & T Infocity Ltd., v. CIT**, wherein a similar case of the assessee having occupied in excess of the stipulated 50% of the allocable industrial space fell for consideration; and it was held that approvals sought under the non-automatic approval category did not require compliance with the requirement that no single unit should occupy more than 50% of the allocable industrial area. The Tribunal held that the Commissioner of Income Tax had no authority to invoke his powers under Section 263 of the Act.

The fact that the respondent-assessee had sought approval under the non-automatic approval route prescribed in the Industrial Park Scheme, 2002 by the Central Government, and the stipulation of occupying industrial space below 50% is prescribed only for the automatic approval route and not for the non-automatic route, is not in dispute. It is therefore clear that the respondent-assessee was entitled to claim deduction under Section 80IA(4)(iii) of the Act; and the Commissioner of Income Tax had erroneously exercised jurisdiction under Section 263 of the Act to revise the assessment order.

The Tribunal is the final Court of fact and, save a substantial question of law arising for consideration, this Court would not exercise

jurisdiction under Section 260A of the Act to interfere. The order under appeal does not give rise to a substantial question of law.

The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

15th July 2016

RRB