

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH

AND

The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL No. 4 of 2017

Principal Commissioner of Income Tax 4,
No.121, Mahatma Gandhi Road,
Chennai 600 034 .. Appellant

Versus

M/s. Linea Fashions (India) Pvt. Ltd.,
SDF-III, Unit Nos.47-57 and 69-79,
MEPZ, Tambaram,
Chennai 600 045 .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 29.4.2016 passed in I.T.A.No.565/Mds/2014 for the assessment year 2006-07.

Against the Order of the Commissioner of Income Tax, (Appeal II), 121, Mahatma Gandhi Road, Nungambakkam, Chennai-34 dated 22/11/2013 and made in ITA.No.484/2013-14 G.I.No./P.A.No.AAACL 7616 C for the Assesment Year 2006-2007 against the Order of the Assistant commissioner of Income Tax Chennai-34 dated 30/09/11 and made in PAN/GIR No. AAACL 7616 C ward/Circle AC IT Company (circle -II (4) previous years 31/03/2006 for the Assesment year 2006-2007 against the Order off the commissioner of Income Tax Department dated 30.12.2010 an made in C.No.218(23)/203/2010-11 Assesment year 2006-2007 PAN AAACK 11415E against the Order of the Income Tax, company circle II (4) chennai 34. dated 11/12/2008 PAN/GIR No.AACL 7616 C. Previous year 31/03/2006 for the Assesment Year 2006-2007.

For Appellant .. Mr.T.R.Senthil Kumar

JUDGMENT

(Order of the Court was delivered by Anita Sumanth, J.)

This Appeal challenges the order of the Income Tax Appellate Tribunal for the assessment year 2006-07 raising the following substantial questions of law:

1. Whether on the facts and circumstances of

the case and in law, Tribunal was right and justified in holding that reimbursement of interest received from Ministry of Textiles, Government of India under Technology Upgradation Fund Scheme TUFS is derived from export of articles or things so as to qualify for deduction u/s10B of the Income Tax Act?

2. Whether on the facts and circumstances of the case and in law, Tribunal was correct and justified in holding that reimbursement of interest received under TUFS is eligible for deduction u/s10B overlooking the fact that it was not derived from the export activity and instead arose from a Scheme of Government of India and has no nexus with the export activity?'

2. The admitted facts are that the Assessee is engaged in the manufacture and export of textile garments and claims relief under section 10A of the Income Tax Act (in short 'Act'). The Government of India had initiated a Scheme specifically to encourage investment in Textile units, specifically technology upgradation. The Scheme, called the Technology Upgradation Fund Scheme (TUFS), provided that the Ministry of Textiles will reimburse 5% of the interest paid by the Assessee on loans availed from identified banks/financial institutions for a period of 5 years.

3. In the financial year relevant to Assessment year 2006-07, the Assessee received a sum of Rs.74.37 lakhs from the Ministry of Textiles in accordance with the TUFS that was reduced from the total interest and finance charges in arriving at the taxable income. Further, the claim under Section 10A of the Act also included the interest amount received. This was accepted by the Assessing Officer in the order of assessment dated 11.12.2008. The aforesaid order of assessment was subject to suo motu revision under section 263 of the Act by the Commissioner of Income Tax vide order dated 30.12.2010. The Commissioner was of the view that the interest income was not eligible for relief under Section 10A of the Act, in view of the judgments of the Supreme Court in *Cambay Electric Supply Industrial Co. Ltd V. CIT* ((1978) 113 ITR 84) and *CIT v. Sterling Foods* ((1999) 237 ITR 579). Accordingly, the order of assessment was set aside and the Assessing Officer was directed to pass a fresh order reducing the interest income from the export claim.

4. Thereafter, the Assessing Officer passed an order dated 30.09.2011 in accordance with the directions of the Commissioner of Income Tax denying the claim of the Assessee, that was challenged in appeal before the Commissioner of Income Tax (Appeals), who, vide order dated 22.11.2013, confirmed the order of assessment .

5. In further appeal, the Income Tax Appellate Tribunal, after adverting to the specific ingredients of the scheme, noted that the loan was specifically availed for purchase of new machinery for upgradation of technology and has actually

been expended for the stated purpose. The submission of the Assessee was to the effect that the reimbursement of income of 5% under the TUFS constituted a capital receipt, not liable to tax. The Tribunal, in conclusion accepted the claim of the Assessee that the reimbursement of interest of 5% by the Government would increase the profit on export sales that are eligible for deduction under section 10A of the Act. The appeal was allowed. Assailing the above order of the Tribunal, the Revenue is in appeal before us.

6. We have heard Mr.T.R.Senthilkumar, learned counsel appearing for the Revenue.

7. Admittedly, the Assessee availed a loan from ING Vysya Bank of an amount of Rs.6.44 Crores for investment in machinery to upgrade the technology. It also received reimbursement of 5% of the interest as per the terms of TUFS. The Assessee, thus, satisfied the requirements of the Scheme. Also admittedly, the garments manufactured have, in fact, been exported.

8. We are of the view that the Tribunal, in allowing the appeal, has considered and decided the matter in a proper perspective. The Assessee, admittedly, is engaged solely in the activity of export as it is a 100% Export Oriented Undertaking. The benefit of reimbursement obtained by the Assessee would result in the increase of profit on export sales. The relief granted in terms of Section 10B would, thus, stand increased to that extent. This is, thus a special benefit provided to an Assessee that is directly relatable to the eligible activity engaged in by the Assessee, in this case, the manufacture and export of textile garments.

9. We refer, in this regard, to the decision of the Bombay High Court in the case of CIT V. Punit Commercial ((2001) 245 ITR 550) that, though rendered in the context of Section 80HHC of the Act, decided an identical question, wherein Justice Kapadia (as he then was) holds thus:

In the statement of facts vide para. 4(a), it is mentioned that the assessing officer has treated the interest income as income from other sources whereas the impugned judgment and the order of the assessing officer proceed on the footing that the interest income was business income, but it was not an income from exports (see para. 2 of the impugned judgment of the Tribunal). Hence, we refuse to go into the larger questions of law canvassed by the learned counsel for the department. Suffice it to say that in this matter, the Assessee is a 100 per cent. exporter. In this case, section 80HHC(3)(a) is applicable as the Assessee is a 100 per cent exporter. Hence, the entire business income is deemed to be profit derived from export of goods. Therefore, the interest income could only fall under "business income". Section 80HHC(3)(a) deals with a 100 per cent. exporter whereas

section 80HHC(3)(b) deals with composite business. In the latter case, local sales are included. Hence, the entire profits are entitled to deduction. This would include interest income also.

10. Accordingly, the substantial questions of law are decided against the Revenue and in favour of the Assessee. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

TO

1.The Income Tax Appellate,
Tribunal D Bench,
121 Mahatma Gandhi Road, Chennai-34.

2.The Commissioner Of Income Tax,
Chennai-34.

3.The Deputy commissioner of Income Tax,
Company Circle-VI), Chennai-34.

+1cc to Mr.T.R/Senthil Kumar, Advocate 4233

TAX CASE APPEAL No. 4 of 2017

AD(CO)

GN(29/11/2017)

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