IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

Tax Case Appeal No.1577 of 2008

M/s.Intelligent Micro Systems (P) Ltd.,
14, Block 11, SIDCO Electronic Complex,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai - 32. ...Appellant

-vs-

The Commissioner of Income Tax
Chennai. .... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench "A", dated 16.11.2007 in I.T.A.No.150/Mds/2006 for the assessment year 2001-02.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.Karthick Ranganathan
and Mr.S.Rajesh

J U D G M E N T

(Judgment of the Court was delivered by
T.S.SIVAGNANAM,J.)

This appeal by the Assessee filed under Section 260-A of the Income Tax Act, 1961 (for brevity the "Act") is directed against the order passed by the Income Tax Appellate Tribunal, Chennai Bench "A", dated 16.11.2007 in I.T.A.No.150/Mds/2006 for the assessment year 2001-02.

2. The appeal has been admitted on 03.11.2008 on the following substantial questions of law:-

> " 1. *Whether on the facts and circumstances of the case the installation of the equipment is a part of manufacturing activity carried on by the Appellant and thus the appellant is entitled to relief u/s.80IB of the Act*?
>
> *2. Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in holding that installation of a equipment is not a part of manufacturing activity and thus the appellant is not entitled to relief u/s.80 IB of the Act"*

3. The assessee filed return of income for the year under

consideration, 2001-02 on 31.10.2001 admitting a total income of Rs.10,89,650/-. The return was processed u/s.143(1) of the Act and notice under Section 143(2) of the Act was issued. Thereafter, the case was discussed by the Assessing Officer with the authorised representative of the assessee. With regard to the claim of deduction u/s.80IB of the Act, the assessee contended that they are manufacturers in specialised gas filling, measuring and weighing machines and supplying the same to various public sector oil companies for supply, installation and commissioning of the equipment in their plants and these machines and weighing systems are usable only on installation and commissioning after interfacing with control systems.

4. The assessee contended that the contract is composite and the final product emerges only on completion of installation and these systems are not stand-alone units and the system gets completion only on the installation of equipment and can be used only after commissioning. It was further contended that the act of installation completes the manufacturing activity of the product. It is a composite supply and installation contract with supply being a major part of the contract. The raw materials utilised are entirely different from finished

system in name, character and use. Installation and commissioning of the weighing systems does not alter the nature of business.

5. Thus the question before the Assessing Officer was whether for the purpose of allowing the deduction u/s.80IB, whether the installation of the equipment carried on by the assessee would amount to "Manufacture".

6. The assessee's contention was that the supply and erection of weighing system after fabricating also amounts to "Manufacture" since the installation carried out by the assessee is essentially and in-extricably being part of manufacture. Therefore, they justify their claim for deduction u/s.80IB of the Act. The Assessing Officer did not agree with the assessee and held that erection or assembling at the site of the customer does not create a new product. The product being already manufactured is installed at the site of the customer and such activity will not amount to manufacture. Therefore, the Assessing authority held that charges relatable to such installation work will not qualify for deduction u/s.80IB. Accordingly, the Assessing Officer estimated the erection charges at 30% of the work order, which has been billed by the assessee and the profit on that was estimated at 15% of the erection

charges estimated. Accordingly, the Assessing Officer completed the assessment and computed the deduction u/s.80IB of the Act.

7. Aggrieved by the said order, the assessee preferred appeal before the Commissioner of Income Tax (Appeal) (CITA). The Appellate Authority considered the documents placed before it and after appreciating the same allowed the appeal filed by the Assessee.

8. The Revenue preferred appeal before the Tribunal and the assessee filed cross objection to sustain the order of the CIT(A). The Tribunal allowed the appeal filed by the Revenue and on a reading of the order, we find that the appeal was allowed only for the reason that no document was produced by the assessee before the Tribunal to examine whether the contract was a composite contract.

9. The learned counsel for the assessee would contend that the paper book which was filed before the CIT(A) was also filed before the Tribunal and it is incorrect to state that documents were not produced. In any event, it is submitted that the CIT(A) has appreciated the documents and the Court may consider the correctness of the order

passed by the CIT(A).

10. Without going into the controversy as to whether the assessee has produced documents before the Tribunal or not despite opportunity and direction, we propose to examine the correctness of the order passed by the CIT(A) as to whether the Appellate Authority was right in allowing the appeal filed by the assessee.

11. The Revenue's submission before us is that there is a difference between completeness of project and usability of the project and what the assessee now seeks to do is to bring about the usability aspect of the product into the term "manufacture", which is impermissible. It is further submitted that the CIT(A) was carried away by the time when the project became operational, which is an incorrect way of interpretation since the contract for the purpose of supply, installation and maintenance undoubtedly will not fall within the ambit of the term "manufacture". However, it is the revenue's contention that the Assessing Officer was very reasonable in estimating the charges towards erection at 30% and computed the profit on the same only at 15% and in the given circumstances, the CIT(A) was not justified in

disturbing the order passed by the Assessing Officer.

12. We have heard Mr.R.Sivaraman, learned counsel for the assessee and Mr.Karthick Ranganathan, learned Standing Counsel for the Revenue.

13. In our considered view, the order passed by the CIT(A) is a very reasonable order and deserves to be sustained. We support such conclusion with the following reasons:

On a reading of the order passed by the CIT(A), it is evidently clear that sufficient materials were placed before the CIT(A) to examine the nature of the contract. In our view, the Assessing Officer cannot make dissection of composite contract which involves various elements. In the instant case, the contract is for design, supply, installation and maintenance. Therefore, for the Assessing Officer to come to a conclusion that the design would fall within the category of "manufacture" and not supply and installation, in our considered view would be an incorrect way of interpreting the contract entered into between the two parties. The Assessing Officer did not have material to split up the contract into one or more parts. We have examined the relevant documents which were placed before the CIT(A) and it appears from those documents that the contract is a very complex contract involving technical design and installation for a project and that is why, the contract has a component called design so the design has to be done for a customer to suit his parameters. Obviously, the product made by the appellant is not a product which available "off the shelf". The product which is subject matter of consideration has been designed exclusively for the customers, which are Government of India Enterprises and the design is to suit the customers' need and unless it is operational the product does not come into being. This is the correct manner the contract has to be interpreted and has rightly been interpreted by the CIT(A). The CIT(A) rightly concluded that the activity of the assessee in designing, engineering and fabricating of the plant and systems in the contract with Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd., Bongaigaon Refinery and Petro Chemicals Ltd., is manufacture of article or thing. Thus, the conclusion arrived at by the CIT(A) holding that the criteria laid down under Section 80IA / 80IB of the Act stands fulfilled is the correct conclusion arrived at by the CIT(A) since the charges payable for the contract by the customers was a single component and the entire process involved is so inextricably connected, there is no room for the Assessing Officer to split up the contract as done in the assessment order.

14. Thus, for the above reasons, we find that the Tribunal erred in reversing the well considered order passed by the CIT(A) and we are fully convinced that on the facts and circumstances of the case, the contract cannot be interpreted in the manner as done by the Assessing Officer. Hence, the appeal filed by the assessee is allowed and the order passed by the Tribunal is set aside. The order passed by the CIT(A) dated 22.09.2005 is restored and the substantial questions of law are answered in favour of the assessee. No costs.

(T.S.S.,J.) (N.S.K.,J.)

19.11.2018

Speaking / Non-Speaking Order

Index : Yes/No

svki

To

The Income Tax Appellate Tribunal
"A" Bench, Chennai

T.S.SIVAGNANAM,J.

and

N.SATHISH KUMAR,J.

(svki)

TCA.No.1577 of 2008

19.11.2018