IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.2026 of 2008

M/s.Covanta Mudurai Operating
Private Limited ... Appellant

Cause title accepted vide order
of Court dated 17.11.2008 made
in M.P.No.1 of 2008 in
TC.SRNo.35064 of 2008

-vs-

The Assistant Commissioner of Income Tax,
Company Circle(3),
Chennai-600 034 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 19.12.2007 in ITA No.3158/Mds/2004, for the Assessment Year 2002-03.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mrs.R.Hemalatha

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the assessee is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, dated dated 19.12.2007 in ITA No.3158/Mds/2004, for the Assessment year 2002-03.

2.This Appeal has been admitted on 01.12.2008, on the following Substantial Questions of Law:

> *"1.Whether the Appellate Tribunal is correct in law in confirming the action of the respondent in rejecting the claim of deduction under Section 80IA of the Act in the computation of taxable total income comprised and derived from establishing, operating and maintaining the power plant engaged in generation or generation & distribution of power?*

2.Whether the Tribunal is correct in law in sustaining the rejection of the claim of deduction under Section 80IA of the Act on the facts and in the circumstances of the case even though there was no prescription of law for owning the assets of the manufacturing unit and further there was no prescription of law for owning the goods/articles produced/generated from such manufacturing unit?

3.Whether the Tribunal is correct in law in concluding that the Agreement entered between the appellant and the owner for establishing, maintaining and operating the power plant was in the nature of 'works contract' even though the respondents acceptance of the said Agreement as a 'service contract'?

4.Whether the Tribunal is correct in law in concluding that the provisions of sub section 13 to Section 80IA of the act inserted retrospectively in the Act were attracted to the facts of the case even though the scope of the contract under consideration was admittedly a 'service contract'?

5.Whether the Tribunal is correct in law in rejecting the claim of deduction under Section 80IA of the Act even though conditions prescribed in Section 80IA (4)(i) and (iv) were fulfilled on *the plain reading of the said provisions of the Act?*

6.Whether the Tribunal is correct in law in interpreting the provisions in such a manner as recorded in the impugned order to reject the claim of deduction under Section 80IA of the Act ignoring the well established rules of interpretation of taxing statute especially a beneficial provision viz., 'plain & liberal interpretation' and 'liberal & Harmonious interpretation'?

3.Heard Mr.A.S.Sriraman, the learned Counsel for the Appellant/assessee and Mrs.R.Hemalatha, learned counsel for the respondent/Revenue.

4.The Tribunal dismissed the appeal filed by the assessee along with another appeal in ITA No.1836/Mds/2006. Against the said order, the assessee filed T.C.A.No.1500 of 2008, which was dismissed by this Court, by judgement dated 14.09.2018, by following the decision taken in another case in T.C.A.No.860 of 2008, dated 04.04.2018. The operative portion of the order passed in the said appeal reads as follows:

"7. The claim for deduction made by the appellant under Section 80IA of the said Act was denied on the ground that the appellant's undertaking has not been set up for generation or for generation and distribution of power. As rightly pointed out by the Tribunal, the main purpose of providing deduction under Section 80IA of the said Act is to encourage investment in certain specific industries and to augment the industrialization of the country. The Tribunal found from the documents produced by the assessee that the assessee made a total investment of less than Rs.10 lakhs (gross), but claimed deduction of more than Rs.67 lakhs. Therefore, the Tribunal further found that granting deduction under Section 80IA of the said Act to the assessee in this background would defeat the very purpose of Section 80IA of the said Act. We fully endorse the view taken by the Tribunal in this regard.

8. With regard to the factual aspect, it has to be seen as to whether the Assessing Officer and the First Appellate Authority had rightly appreciated and construed the effect of the agreement, which the assessee entered into with the generating company namely Samalpatti Power Corporation Private Limited (SPCL). The Assessing Officer examined the terms and conditions of the agreement entered into between the assessee and the SPCL and found that the appellant is only a contractor and the power plant for generation and distribution of electricity is owned by *the SPCL*

9. The assessee contended before the Assessing Officer that the owner of the plant namely the SPCL cannot operate their own plant, as they never had the technical expertise to operate the plant.

10. The Assessing Officer had done a thorough factual exercise to consider the correctness of the said submission and found that M/s.Covanta USA owns 70% of the shares in the SPCL and that M/s.Covanta USA also owns 100% of the shares in the assessee through its Mauritius subsidiary. Taking into consideration the submissions made by the assessee, the Assessing Officer went through the records of the SPCL and also the shareholding pattern, profit and loss account, balance sheet and computation of income, etc., and found the version of the assessee that the owner of the power plant had no technical expertise, is factually incorrect.

11. With regard to the next aspect as to whether the contention raised by the assessee by referring to the definition of 'generating company' under the provisions of the Electricity Act, 2003, this issue was also considered by the Assessing Officer as well as the First Appellate Authority and the Tribunal.

12. The learned counsel for the appellant reiterated that Section 2(28) of the Electricity Act, 2003 defines 'generating company', to mean any company or body corporate or association or body of *individuals, whether incorporated or not, or artificial judicial person, which owns or operates or maintains a generating station. Further reference was made to Section 2(29) of the Electricity Act, 2003, which defines 'generate' to mean to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given.*

13. In our considered view, the term 'generating company' can only refer to the SPCL and not the appellant, since the Assessing Officer, the First Appellate Authority and the Tribunal, after considering the scope of the agreement entered into between the appellant and the SPCL, clearly held that the appellant is not the owner of the power plant and that it does only maintenance work, for which, it is given a fee. Even assuming that the appellant contributed technical knowhow for the purpose of generating electricity, it does so on behalf of the owner of the plant namely the SPCL. We find that the interpretation of agreement between the appellant and the SPCL, as given by the Assessing Officer, the First Appellate Authority and the Tribunal, is perfectly legal and valid and that there is no perversity in the finding rendered by all the three Authorities. In such circumstances, we cannot re-appreciate the factual position to arrive at a different conclusion. Thus, for all the above reasons, we find that there are no merits in this appeal.

14. Accordingly, the substantial questions of *law framed for consideration are answered against the assessee and in favour of the Revenue and the above tax case appeal is dismissed. No costs."*

5.Following the above judgement as well as the judgment passed in T.C.(A) No.1500 of 2008, dated 14.09.2018, this appeal, filed by the assessee, is dismissed and the Substantial Questions of Law are answered against the assessee. No costs.

[T.S.S., J.] & **[V.B.S., J.]**

msk **25.10.2018**

To

1.The Income Tax Appellate Tribunal Madras 'B' Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

msk

T.C.A.No.2026 of 2008

25.10.2018