IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.28 of 2009

M/s.Tidel Park Ltd.,
4, Canal Bank Road,
Taramani,
Chennai-600 113 .... Appellant

-vs-

The Assistant Commissioner of Income Tax,
Company Circle III(2),
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 'C' Bench, dated 08.08.2008 in ITA No.750/Mds/2007, for the Assessment year 2003-04.

Against the Order of Commissioner of Income Tax (Appeals) - III, Chennai Order dated 16/01/2007 in ITA.No. 67/2006-07/A-III, for the Assessment Year 2003-04 and against the Order of the Assistant Commissioner of Income Tax, Company circle III(2), Chennai, Order dated 10/03/2006 in P.A.No./G.I.R.No. 32333/AABCT0666R for the Assessment Year 2003-2004.

For Appellant : Mr.M.Swaminathan

For Respondent : M/s.Vijayaraghavan

JUDGMENT

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

This appeal, filed by the appellant/assessee, under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, in ITA No.750/Mds/2007, dated 08.08.2008, for the Assessment year 2003-04.

2.The Appeal has been admitted on the following

Substantial Questions of Law:

"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the appellant is not entitled to deduction under Section 80IA in respect of interest income from deposit amounting to Rupees 4,79,21,226/-, Miscellaneous Income of Rs.46,72,181/-, other rent of Rs.1,01,98,239/-?

2.Whether on the facts and circumstances of the case, the Tribunal failed to appreciate the entire income of the Appellant is derived only from developing, running and maintaining of infrastructure project (STP) and hence no part of the same can be excluded in computing the relief under Section 80IA?"

3.Heard Mr.M.Swaminathan, the learned counsel for the appellant/assessee and Mr.Vijayaraghavan, the learned Counsel for the respondent/Revenue.

4.The only issue which falls for consideration is as to whether the assessee/M/s.Tidel Park Ltd., is entitled for claiming exemption under Section 80IA of the Income Tax Act, 1961 in respect of interest income, miscellaneous income and other rent.

5.The assessee company, during the assessment year in question (2003-04), has shown interest income, other miscellaneous income and rent etc. The assessee contended that they had taken the land on lease from the adjacent property with M.G.R.Film City and in this land, the facilities of swimming pool, play area, parking are provided to the members and the miscellaneous income/rent, include services from the above leased property. The assessee company submitted that the entire income arising to the company is inextricably connected with the infrastructural project and therefore, entitled for deduction under Section 80IA of the Act. The Assessing Officer did not agree with the assessee holding that interest on deposit in banks are not eligible for Section 10B/10A exemption and in this regard relied on the decision of this Court in the case of Commissioner of Income Tax vs. Menon Impex Private Limited (259 ITR 403). Further, by referring to the other decisions, it was pointed out that the word 'derived' has narrower meaning than the word 'attributable to'. The word 'derived' is followed by the word 'from', which shows that there should be a direct nexus between the source and the income generated.

6.The assessee filed appeal before the Commissioner of Income Tax (Appeals-III) ('CITA' for brevity). The CITA agreed with the view taken by the Assessing Officer and held that the facilities on leased property cannot be stated to be part of infrastructure project under consideration. There were other issues which were dealt with in the appeal and the matter was remanded by the appellate authority to the Assessing Officer for a decision on those issues.

7.In respect of the denial of the exemption under Section 80IA of the Act, in so far as it relates to interest income, miscellaneous income and other rent, the assessee preferred appeal before the Tribunal. The Tribunal agreed with the view expressed by the Assessing Order and the Commissioner of Income Tax (Appeals) and held that the miscellaneous income and rental income cannot be said to be profits and gains 'derived' by the undertaking from the eligible business. Aggrieved by the same, the assessee is before this Court with this appeal.

8.The learned counsel appearing for the assessee referred to the approval granted for setting up of industrial park by the Government of India, vide Notification dated 24.05.1999. Referring to the terms and conditions of the approval, it is submitted that the Notification mandates certain facilities to be provided as common facilities, which are what have been provided by the assessee. Further, in so far as the modules are transferred to 3rd parties, an amount of 5% of the cost is retained in a separate account to take care of repairs and maintenance and the interest there from should be construed as interest derived from the undertaking. Further, the learned counsel has drawn our attention to a sample Lease Deed executed in favour of a company by the assessee dated 12.07.2010 to demonstrate that all the facilities provided are integral part of the infrastructural project and they are inextricably linked with the project and therefore, would qualify for exemption under Section 80IA of the Act. The learned counsel relied on the Circular issued by the Central Board of Direct Taxes in Circular No.16 of 2017, dated 25.4.2017, to state that rent from letting out of premises/developed space along with other amenities in Industrial Park/SEZ is to be treated as business income. Reliance was also placed on the decision of the High Court of Karnataka in the case of Commissioner of Income Tax and another v. Information Technology Park [(2014) 369 ITR 0460 (Karn)], wherein it was held that rental income received by the assessee cannot be chargeable to tax as rental income received by the assessee fell under 'business income' and not under 'income from house'. Reliance was placed on the decision of the High Court of Karnataka in the case of Commissioner of Income Tax vs. Velankanni Information Systems (P) Ltd., [(2013) 218

TAXMAN 0088 (Karnataka)], wherein it was held that where agreements were entered into contemporaneously and object was to enjoy the entire property, viz., building, furniture and accessories as a whole, which was necessary for carrying on business, income derived there from cannot be separated based on separate agreement entered into between the parties and the entire income is assessable as business income. For the above grounds, the learned counsel for the assessee submits that the order passed by the Tribunal calls for interference.

9.The Learned counsel appearing for the Revenue, while seeking to sustain the order passed by the Tribunal, submitted that the CIT(A) and the Tribunal rightly interpreted the nature of income and found that the miscellaneous income, rental income and interest income cannot be said to the profits and gains derived by the undertaking from the eligible business. Further, it is submitted that the documents which are placed by the assessee before this Court, viz., the approval granted by the Government of India, the Lease Deed etc., were never placed before the Tribunal and it is not clear as to whether the approval Notification was placed before the Assessing Officer. Further, it is pointed out that the sample Lease Deed produced before this Court, is dated 12.07.2010, much after the assessment was complete and even much after the order passed by the Tribunal.

10.After elaborately hearing the learned counsels for the parties and carefully perusing the materials placed on record, we are of the considered view that the matter can be remanded to the Assessing Officer for fresh consideration. We say so because, the matter has been remitted to the Assessing Officer on other issues, viz., merits of the assessment, as canvassed by the assessee. So far as, the claim for exemption under Section 80IA of the Act is concerned, it requires interpretation of the documents and how the income was treated in the hands of the assessee and how the contracting parties understood the transaction, whether the notification issued by the Government of India mandates the provision of other amenities and facilities and whether these amenities and facilities are integral part of the infrastructural project, are all factual matters to be decided by the Assessing Officer. Though the Revenue would contend that the documents were not placed before the Tribunal, we do not want to shut out the assessee on technicalities, as the issue is a recurring issue and the endeavour should be to give a quietus to the issue and to ensure that the correct income is taxed at the hands of the assessee.

11.Thus, for the above reasons, the order passed by the Tribunal on the above issue is set aside and the matter is remanded to the Assessing Officer for fresh consideration. The assessee is granted liberty to place all the documents before the Assessing Officer, who shall consider that issue afresh and take a decision on merits and in accordance with law. So far as the sample Lease Deed is concerned, we are fully conscious of the fact that it is dated 12.07.2010 and obviously the assessee could not have produced the same either before the Assessing Officer or before the Commissioner of Income Tax (Appeals) or before the Tribunal, because, all the proceedings concluded in the year 2008 itself. Therefore, the assessee is at liberty to produce the copies of the relevant documents, relating to the assessment year under consideration, as observed supra.

In the light of the above, the Substantial Questions of Law are left open and the appeal filed by the assessee is allowed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

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

2.The Commissioner of Income Tax (Appeals)-III,
Chennai.

3. The Assistant Commissioner of Income Tax,
Company Circle III (2), Chennai.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 79389
+1cc to Mr.S.Premalatha, Advocate, S.R.No. 79852

T.C.A.No.28 of 2009

RV(CO)
GN(19/12/2018)