IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2018

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

Tax Case (Appeal) Nos.793 to 795 of 2008

Commissioner of Income Tax,
Chennai ... Appellant in
all the Appeals

-vs-

M/s.Brakes India Ltd.,
Padi,
Chennai-600 050 ..... Respondent in
all the Appeals

Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-Tax appellate Tribunal Chennai �A� Bench, dated 20.06.2005 in ITA Nos.1547/Mds/2000, 1753/Mds/2000 and ITA No.427/Mds/2001, for the assessment year 1997-98, respectively.

For Appellant : Mr.Ravi Kumar

For Respondent : Mr.Vijayaraghavan

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COMMON JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

These appeals by the Revenue are directed against the common order passed by the Income Tax Appellate Tribunal in ITA Nos.1547/Mds/2000, 1753/Mds/2000 and ITA No.427/Mds/2001, for the assessment year 1997-98.

2.The Appeals have been admitted on the following Substantial Questions of Law, vide order dated 02.09.2008:
�1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that expenditure on renting and maintaining a guest house is allowable as a business expenditure?

2.Whether on the facts and in the circumstances of the case, the Tribunal was right in excluding scrap sales collection from the total turnover for the purpose of calculation of benefit under Section 80HHC of the Income Tax Act?

3.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the 90% of the gross receipts like lease rentals, interest, technical fee, sub contract charges, service charges, etc., cannot be deducted from the profits while computing the deduction under Section 80HHC of the act as per explanation(baa)?

4.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure on R & D unit was not to be treated as incurred for Sholinganallur unit for the purpose of computing the deduction under Section 80HH and 80I of the Act?

3.The learned counsel for the respondent/assessee pointed out that on account of low tax effect, by applying Circular No.3 of 2008, dated 11.7.2018, the Revenue would not be entitled to pursue these appeals. In this regard, the learned counsel appearing for the appellant/Revenue does not have any written instructions to withdraw these appeals. Therefore, we have carefully perused the assessment order, dated 15.03.2000, for the assessment year 1997-98.

4.The only issue, which is subject matter of these appeals, is with regard to the claim of deduction under Section 80HHC of the Income Tax Act, 1961 (hereinafter 'the Act' for brevity). Under the said head, the assessee claimed a deduction of Rs.1,26,15,663/-. The Assessing Officer, while completing the assessment, has allowed deduction under Section 80HHC to an extent of Rs.1,07,57,158/-. Thus, the only remaining amount is the subject matter of these appeals, which is far below the threshold limit of Rs.50 lakhs, stipulated in Circular No.3 of 2018. Thus, the Revenue would not be entitled to pursue these appeals.

5.One more issue is with regard to the allocation of expenses on R&D unit, which according to the Revenue, was not to be treated as incurred for Sholinganallur Unit, for the purpose of computing the deductions under Sections 80HH and 80I of the Act.

6.We find from Annexure-2 to the assessment order dated 15.3.2000 that the allocation for R&D Expenses is Rs.1661357/- and the deduction under Section 80IA is at 30%. Thus, it is seen that the remaining amount is also lesser than the threshold limit prescribed in the Circular No.3 of 2018.

7.Thus, for the above reasons, the Revenue cannot pursue these Appeals in view of the low tax effect. Hence, the Appeals are dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs. The Revenue is at liberty to seek for restoration of appeals if at a later point of time, it is found that the tax effect is above the threshold limit.

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

10.10.2018

msk

To

The Income-Tax appellate Tribunal Chennai □A□ Bench
Chennai.

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

msk

T.C. (Appeal) Nos.793 to 795 of 2008

10.10.2018