IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

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

Tax Case (Appeal) No.865 of 2008

M/s. Indo Japan Apparels Pvt. Limited.,
B-16, Madras Export Processing Zone,
Tambaram, Chennai – 600 045.

... Appellant

vs.

The Assistant Commissioner of Income Tax
Company Circle-II(4), Chennai – 600 034.

...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 "A" Bench, dated 13.04.2007 in ITA No.1905/Mds/2005, for the assessment year 2001-02.

For Appellant : Mr.R.Venkatanarayanan for
Mr. Subbarya Aiyar Padmanabhan

For Respondent : Mr. Karthick Ranganathan

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JUDGMENT

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

This appeal by the assessee, filed under Section 260A of the Income Tax Act, 1961 is directed against the order passed by the Income-Tax Appellate Tribunal, Chennai "A" Bench, dated 13.04.2007 in ITA No.1905/Mds/2005, for the assessment year 2001-02.

2.The Appeal has been admitted, vide order dated 08.07.2008, on the following two Substantial Questions of Law:

> *"1.Whether on the facts and in the circumstances of the case, the Tribunal erred in not dealing with the relief granted by the CIT(Appeals) under Section 10A under the amendment provision to that Section?*
>
> *2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that job work charges should be included in the total turnover for the purpose of computation of deduction under Section 10A of the Act?"*

3.We have heard Mr.R.Venkatanarayanan for Mr. Subbarya Aiyar Padmanabhan, the learned counsel for the appellant and Mr.Karthick Ranganathan, the learned Senior Standing Counsel for the respondent/Revenue.

4.At the first instance, a genuine doubt arose in our mind as to why at all the assessee is before us as against the order passed by the Tribunal. The order passed by the Tribunal was in an appeal filed by the Revenue challenging the order passed by the Commissioner of Income Tax (Appeals-III) (CITA), dated 12.10.2005, wherein the assessee was granted relief of deduction under Section 10A of the Act. The Tribunal, in its order has extracted para 4 of the order passed by the CITA, which reads as follows:

> "4.The next ground of the appellant is that they should also be entitled to relief under Section 80HHC on the income which is not considered for deduction under Section 10A. It is the contention that as Section 10A only provides for income from exports and does not exempt the income from the total income there is no bar for granting relief under Section 80HHC also. The appellant on the decision of the Rajasthan High Court (229 ITR 123) for support of this contention. In view of the above findings, the alternate submission for

> granting relief under Section 80HHC is academic and does not arise."

5.The Tribunal, after considering the above order opined that the issue must go back to the file of the CITA for reconsideration to adjudicate the issue, on merits. The Tribunal came to such a conclusion, since, the CIT(A) has summarily dismissed the relief sought for by the assessee under Section 80HHC, though it granted relief to the assessee under Section 10A of the Act. Thus, the Tribunal was of the opinion that the matter requires to be re-examined. We may not fully agree with the view expressed by the Tribunal, since the CITA did not reject the relief sought for by the assessee under Section 80HHC, but observed that the alternate submission made by the assessee for granting relief under Section 80HHC is academic and does not arise. Therefore, technically it is not a decision on merits, but a decision wherein, the CITA opined that the alternate submission need not be considered. The appellant is on appeal before us, apprehending that the Remand order passed by the Tribunal, remanding the case to the CITA would be an open remand whereby, whatever relief granted to the assessee would also be re-adjudicated.

6.The assessee need not have any apprehension in this regard, as the order passed by the Tribunal is very clear, since this appeal is filed by the assessee and not by the Revenue. Therefore, in the assessee's appeal they cannot be worse of than they were before CITA. Therefore, in the facts and circumstances, it would suffice to clarify that the Remand to the CIT(A) is only to adjudicate the submission of the assessee with regard to their entitlement for the relief under Section 80HHC alone. The other portions of the order passed by the CIT(A) which were decided in favour of the assessee shall remain intact.

7.With the above observations, the appeal stands disposed of confirming the order of Remand passed by the Tribunal and making the scope of remand clear as indicated in the preceding paragraph. In the light of the above, the necessity to decide Substantial Question of Law does not arise. No costs.

(T.S.S.J.) (V.B.S.J.)
29.10.2018

msk/mrm

Index:Yes/No

T.S.Sivagnanam, J.

and
V.Bhavani Subbaroyan, J.

msk/mrm

To

1.The Assistant Commissioner of Income Tax
Company Circle-II(4), Chennai – 600 034.

2.Income-Tax Appellate Tribunal, Chennai "A" Bench

T.C. (Appeal) No.865 of 2008

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