IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

T.C.A.No.336 of 2018

Commissioner of Income Tax Central - 1,
No.108, Mahatma Gandhi Road,
Chennai. .. Appellant/Respondent

Vs.

M/s.RR Industries Limited,
RR Tower III, ThiruViKa Industrial Estate,
Guindy, Chennai - 600 032. .. Respondent/Appellant

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 13.09.2013 in I.T.A.No.335/Mds/2013, against the order of the Commissioner of Income Tax(Appeals)-V, chennai-34, dated 30.11.2012 made in CIT(A)-V/ITA.NO.397/2011-12 against the order of the Assistant Commissioner of Income Tax Company circle-V(4), chennai-34, dated 21.12.2011 and made in PAN.NO.AAACR3594H Assessment year 2009-2010.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel
for Income Tax.

J U D G E M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Challenge in this Tax Appeal, is to an order passed by the Income Tax Appellate Tribunal in ITA No.335/Mds/2013, dated 13.09.2013, by which, the Tribunal has allowed the appeal preferred by the assessee against the order of the Commissioner of Income-Tax (Appeals-V), Chennai, dated 30.11.2012, for the Assessment Year 2009-10.

2. Revenue has come up with the instant appeal, raising the following substantial question of law:-

> "Whether the ITAT has correctly interpreted the judgement of Hon'ble High Court so as grant relief to the assessee

u/s.80IA(4) without going into admissibility of the claim on merits ?"

3. When the matter was taken up for admission, at the outset, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for Income Tax Department fairly submitted that, on a similar issue, between the same parties, a Hon'ble Division Bench of this Court in M/s.R.R.Industries Limited, Chennai - 32 Vs. The Income Tax Officer (OSD), Chennai - 34, in Tax Case (Appeals) Nos.139 to 145 of 2012 vide judgement dated 26.06.2013, relating to the assessment years 2002-03 to 2008-09, held the issues in favour of the assessee and the instant appeal relates to assessment year 2009-10. He also submitted that challenge to the said order dated 26.06.2013, is pending before the Hon'ble Apex Court in Civil Appeal Nos.5912 to 5918 of 2015.

4. The only issue raised in this appeal is whether the Tribunal has correctly interpreted the judgement of this Court, so as to grant relief to the assessee u/s.80IA(4) i.e., the income of the assessee from the Industrial Park whether to be assessed under the head "Income from Business", without going into admissibility of the claim on merits.

5. The Hon'ble Division Bench of this Court in M/s.R.R.Industries Limited, Chennai - 32 Vs. The Income Tax Officer (OSD), Chennai - 34, in Tax Case (Appeals) Nos.139 to 145 of 2012 (stated supra), at paragraphs 5 to 9 held as follows:

> "5. By consent of both the parties, even at the time of admission stage, the main appeals are taken up for consideration.
>
> 6. Learned senior counsel for the appellant pointed out that on the admitted fact that the Revenue had not challenged the issue under Section 80IA of the Income Tax Act before the Tribunal, the order now passed by the Tribunal directing the Assessing Officer to go into the character of the receipt, is too academic on facts and the order of remand is wholly unjustified. To that end, he referred to Section 80IA(4) of the Income Tax Act and submitted that the relief under Section 80IA of the Act is available only for the undertaking which are eligible as per the eligibility criteria given under sub Section 4 of Section 80IA. Thus when, once the Department had accepted the reasoning of the Commissioner of Income Tax (Appeals), that irrespective of the character of the receipt, the assessee was

entitled to the relief under Section 80IA with other conditions therein under Section 80IA(4) thus admittedly stood satisfied, the remand order of the Tribunal by directing the Assessing Officer to find out the nature of the receipt is not sustainable in law. He submitted that such enquiry is inconsequential as to the relief under Section 80IA.

7. We agree with the submissions made by learned senior counsel for the assessee. As already seen, two questions were raised before the Commissioner of Income Tax (Appeals), one relating to nature of receipt on letting out the property as an industrial park as approved by designated authority from the Investment Promotion & Infrastructure Development Cell of the Secretariat of Industrial Assistance of the Department of Industrial Policy and promotion in Ministry of Commerce and Industries of the Government of India and other relating to disallowance of claim of deduction under Section 80IA of the Act on the ground of the receipt being held as income from house property. On analysing the facts and on going through the certificate issued, the first Appellate Authority held that the unit was eligible for relief under Section 80IA of the Act. As to the character of the receipt, he held that income received by the assessee was to be assessed as income from business only. Thus, on the claim of deduction for the above said receipt under Section 80IA, the Commissioner of Income Tax (Appeals) pointed out that the approval of the Ministry stated that the assessee was eligible for deduction under Section 80IA (4)(iii) of the Act which specifically referred to developing, operating and maintaining of industrial part. Admittedly the assessee had made the application for development of an industrial park under the scheme notified by the Government in accordance with law. The Commissioner of Income Tax (Appeals) further pointed out that the scheme recognised the activity of any undertaking engaged in the development of infrastructure facilities or built up space with common facilities in any

area allotted or earmarked for the purpose of software development as industrial park as business activity. Thus, while agreeing with the assessee on the character of the receipt of lease rental as business income, he also agreed in principle that the deduction under Section 80IA would be allowed, even if the rental income is assessed as income from house property. Further he relied on the decision of the Apex Court reported in 57 ITR 306 - COMMR. OF INC. TAX v. COCANADA RADHASWAMI BANK LTD that the head under which income is assessed is not relevant for the purpose of claiming exemption under the Act. When the Revenue had accepted the view of the Commissioner of Income Tax (Appeals) on Section 80IA that the assessee had complied with Section 80IA(4)(iii) of the Act, there remains nothing for an enquiry either as to the nature of the receipt or for that matter the facilities developed to be treated as an industrial park to consider the question of deduction under Section 80IA(4)(iii) of the Act. In the background of the above state of affairs, we hold that the view of the Commissioner of Income Tax (Appeals) in this regard does not call for any interference. For the reasons best known and we think, rightly so, the Revenue did not challenge order of the Commissioner of Income Tax (Appeals) on 80IA deduction before the Tribunal. The said fact is not disputed by the Revenue too. Thus, when the character of the receipt is not a question to be gone in the matter of considering the claim of deduction under Section 80IA(4)(iii) of the Act, we do not find that any useful purpose would be served for the Revenue to again insist on a decision on the character of the receipt.

8. In the light of the above, the order of remand passed by the Tribunal is only academic that the Tribunal cannot pass an order of remand for further enquiry on the issue which had already reached finality. Even though learned standing counsel for the Revenue placed heavy reliance on Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1962, we do not find any ground to uphold the

said stand considering the fact that the subject matter of the appeal before the Tribunal being one on the character of the receipt and the issue regarding the deductibility under Section 80IB irrespective of the character of the receipt not being an issue raised by the Revenue even as an additional ground, when the Revenue had no grievance at all as regards the consideration for grant of relief under Section 80IA(4)(iii) of the Act, we do not find any justification in the order of the Tribunal, ordering remand on the issue which does not arise at all for the purpose of a decision thereon. Further there is nothing on record to show that the Revenue raised this as an additional issue even for the purpose of considering Rule 11.

9. In the circumstances, the order of the Tribunal is set aside and the appeals filed by the assessee are allowed. No costs. Consequently, connected MPs are closed."

6. Following the above Division Bench judgement, in the instant case pertaining to assessment year 2009-10, the Tribunal ordered as follows:

"6. We have heard the submission made by the representatives of both the sides and have perused the orders of the authorities below as well as the judgment of the Hon'ble Madras High Court in Tax Case (Appeal) Nos.139 to 145 of 2012 decided on 26.06.2013 in the case of assessee for AYs.2002-03 to 2007-08. The Hon'ble High Court while allowing the appeal of the assessee has held as under:

7. We agree with the submissions made by learned senior counsel for the assessee. As already seen, two questions were raised before the Commissioner of Income Tax (Appeals), one relating to nature of receipt on letting out the property as an industrial park as approved by designated authority from the Investment Promotion & Infrastructure Development Cell of the Secretariat of Industrial Assistance of the Department of Industrial Policy and promotion in

Ministry of Commerce and Industries of the Government of India and other relating to disallowance of claim of deduction under Section 80IA of the Act on the ground of the receipt being held as income from house property. On analysing the facts and on going through the certificate issued, the first Appellate Authority held that the unit was eligible for relief under Section 80IA of the Act. As to the character of the receipt, he held that income received by the assessee was to be assessed as income from business only. Thus, on the claim of deduction for the above said receipt under Section 80IA, the Commissioner of Income Tax (Appeals) pointed out that the approval of the Ministry stated that the assessee was eligible for deduction under Section 80IA (4)(iii) of the Act which specifically referred to developing, operating and maintaining of industrial part. Admittedly the assessee had made the application for development of an industrial park under the scheme notified by the Government in accordance with law. The Commissioner of Income Tax (Appeals) further pointed out that the scheme recognised the activity of any undertaking engaged in the development of infrastructure facilities or built up space with common facilities in any area allotted or earmarked for the purpose of software development as industrial park as business activity. Thus, while agreeing with the assessee on the character of the receipt of lease rental as business income, he also agreed in principle that the deduction under Section 80IA would be allowed, even if the rental income is assessed as income from house property. Further he relied on the decision of the Apex Court reported in 57 ITR 306 -

COMMR. OF INC. TAX v. COCANADA RADHASWAMI BANK LTD that the head under which income is assessed is not relevant for the purpose of claiming exemption under the Act. When the Revenue had accepted the view of the Commissioner of Income Tax (Appeals) on Section 80IA that the assessee had complied with Section 80IA(4)(iii) of the Act, there remains nothing for an enquiry either as to the nature of the receipt or for that matter the facilities developed to be treated as an industrial park to consider the question of deduction under Section 80IA(4)(iii) of the Act. In the background of the above state of affairs, we hold that the view of the Commissioner of Income Tax (Appeals) in this regard does not call for any interference. For the reasons best known and we think, rightly so, the Revenue did not challenge order of the Commissioner of Income Tax (Appeals) on 80IA deduction before the Tribunal. The said fact is not disputed by the Revenue too. Thus, when the character of the receipt is not a question to be gone in the matter of considering the claim of deduction under Section 80IA(4)(iii) of the Act, we do not find that any useful purpose would be served for the Revenue to again insist on a decision on the character of the receipt."

The ld. Counsel for the assessee has also placed on record the copy of the letter dated 1st August 2001 from the Department of Industrial Police & Promotion, Secretariat for Industrial Assistance Investment Promotion & Infrastructure Development Cell, Ministry of Commerce & Industry, Govt. of India where approval has been accorded to the assessee for setting up an industrial park in terms of the scheme notified by the Ministry in exercising of powers u/s.80IA sub-section 4(iii) of the Act.

In view of the judgment of the Hon'ble High Court in assessee's own case and the fact that the assessee is operating industrial park duly approved by the competent authority, we are of the considered opinion that the assessee is entitled to claim deduction u/s.80IA and the income of the assessee is assessable under the head 'Income from Business'.

The appeal of the assessee is allowed, accordingly."

7. Though Mr.T.R.Senthil Kumar, learned counsel for the Revenue submitted that the decision rendered by a Hon'ble Division Bench of this Court in M/s.R.R.Industries Limited, Chennai - 32 Vs. The Income Tax Officer (OSD), Chennai - 34, in Tax Case (Appeals) Nos.139 to 145 of 2012 vide judgement dated 26.06.2013, relating to the assessment years 2002-03 to 2008-09, is pending before the Hon'ble Apex Court in Civil Appeal Nos.5912 to 5918 of 2015, we are of the considered view that the same will not be an impediment, in dealing with the instant tax appeal.

8. Section 262 of the Income Tax Act relates to 'Appeals to Supreme Court'. As per sub-section 3 of Section 262 of the Income Tax Act, where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 260 of the Act. Statute itself, provides for a remedy to the Revenue, as to how a judgment of the Hon'ble Supreme Court should be given effect.

9. In the light of the statutory provision and discussion, we are not inclined to accept the contentions of the learned counsel for the Revenue in that regard. Substantial questions of law have already been answered against the revenue, in the case of M/s.R.R.Industries Limited, Chennai - 32 Vs. The Income Tax Officer (OSD), Chennai - 34, in Tax Case (Appeals) Nos.139 to 145 of 2012 vide judgement dated 26.06.2013. Following the same, instant Tax Case Appeal No.336 of 2018 is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar Income Tax Appellate Tribunal,
'B' Bench, Chennai.

2.The commissioner of Income Tax(Appeals)-V,
121, Mahatma Gandhi Road, Chennai-34.

3.The Assistant Commissioner of Income Tax Company
Circle-V(4), Room No.409,
IV Floor,
Main Buildings, Aaykar Bhawan, 121,
Mahatma Gandhi Road,
Chennai-34.

+1cc to Mr.T.R.Senthil Kumar, Advocate sr.no.42994

T.C.A.No.336 of 2018

br(co)
nr 01/08/2018