

In the High Court of Judicature at Madras

Dated : 04.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SESHASAYEE

Tax Case (Appeal) No.860 of 2008

M/s.Covanta Samalpatti Operating
Private Limited, Chennai-20.

...Appellant

Vs

The Assistant Commissioner of
Income Tax, Company Circle I (3),
Chennai-34.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the
order dated 19.12.2007 made in ITA.No.1496/Mds/2005 on the file of the
Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year
2002-03.

For Appellant :

Mr.S.Sriraman

For Respondent :

Mr.T.Ravikumar and

Mr.R.Sureshkumar

JUDGMENT WAS DELIVERED BY T.S.SIVAGNANAM,J

Heard the learned counsel for the appellant and the learned counsel for

the respondent.

2. This appeal by the assessee is directed against the order passed by the Income Tax Appellate Tribunal in ITA.No.1496/Mds/2005 dated 19.12.2007 for the assessment year 2002-03. The above tax case appeal has been admitted 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 and distribution of power ?

2. Whether the Tribunal is correct in law in concluding that the provisions of Sub-Section 13 to Section 80IA of the Act inserted retrospective 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 ? and

3. 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 in the Act ?"

3. The common issue, which arises for consideration in all the three substantial questions of law, is as to whether the assessee is entitled to claim

deduction under Section 80IA of the Income Tax Act, 1961.

4. Before we proceed further to consider the merits of the submissions made by the learned counsel for the appellant, we wish to point out that the findings rendered by the Assessing Officer in the assessment order dated 30.11.2004 have been confirmed by the Commissioner of Income Tax (Appeals) by order dated 29.3.2005 and further confirmed by the Tribunal by the impugned order. All the three Authorities have concurrently held on facts against the assessee. Therefore, the question would be as to whether this Court, while exercising jurisdiction under Section 260A of the said Act, can re- appreciate the factual findings.

5. The learned counsel for the appellant is right in submitting that if there is a perversity in the approach of any of three Authorities or all the three Authorities, this Court can step in and interfere with the findings.

6. Hence, we need to consider as to whether there is any perversity in the approach by any one of the three Authorities or all the three Authorities.

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.

04.4.2018

Internet : Yes

To

- 1.The Assistant Commissioner of Income Tax, Company Circle I (3), Ch-34.
- 2.The Income Tax Appellate Tribunal, Chennai 'A' Bench.

RS

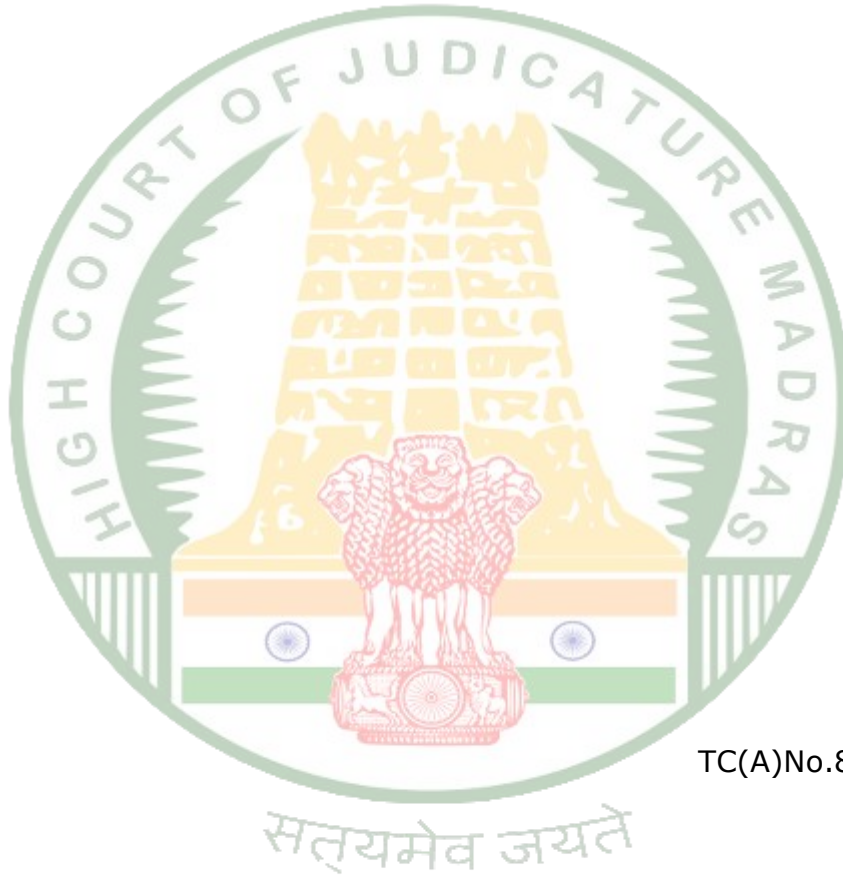
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