

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.01.2019

PRONOUNCED ON: 04.02.2019

CORAM

THE HON'BLE Dr.JUSTICE **VINEET KOTHARI**

AND

THE HON'BLE Dr. JUSTICE **ANITA SUMANTH**

Tax Case (Appeal) Nos.1972 and 1973 of 2008

M/s.Camiceria Apparels India P. Ltd.,
New No.471 (Old No.326)
MKN Road, Alandur,
Chennai – 600 016.

...Appellant in both T.C.As

Vs.

The Assistant Commissioner of Income tax
Company Circle I (3)
Chennai – 600 034.

...Respondent in both T.C.As

APPEALS filed under Section 260A of the Income Tax Act, 1961 against the order dated 08.04.2008 made in I.T.A.No.943/Mds/2007 and 07.04.2008 in I.T.A.No.1980/Mds/2006 on the file of the Income Tax Appellate Tribunal, Chennai for the assessment year 2004-05 and 2003-04.

For Appellant

: Mr.Vikram Vijayaraghavan

for M/s.Subbaraya Aiyar Padmanabhan

For Respondent

: Mr.T.Ravikumar

Sr. Standing Counsel

COMMON JUDGMENT

Dr.ANITA SUMANTH,J.

These Tax Case (Appeals) are filed by the assessee challenging orders of the Income Tax Appellate Tribunal dated 07.04.2008 and 08.04.2008 for the assessment years 2003-04 and 2004-05 respectively.

2. The following substantial question of law arises for our consideration:

Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appellant is not entitled to deduction under section 10B in respect of income on sale of export quota and interest on margin money deposits for opening letter of credit?

3. The assessee, engaged in the manufacture and export of garments, has suffered concurrent orders of assessment, first appeal and second appeal to the effect that it is not entitled to relief under section 10A of the Income Tax Act, 1961 (in short 'Act') in regard to income earned from sale of export quota and interest on Margin Money Deposits for opening Letters of Credit.

4. Mr.Vikram Vijayaraghavan, learned counsel appearing for the assessee submits that the assessee is a 100% export-oriented unit. An entity engaged in export has to mandatorily avail of sufficient quota allotted by the Apparel Export Promotion Council (in short 'APEC') as against only, it may undertake export. The export quota is allotted based on past performance and an export commitment during the year in question backed by sufficient bank guarantee. The quota available with APEC is limited and if an exporter does not obtain the required quota from APEC itself, it would have to be purchased from the open market. The appellant, as an exporter, had sufficient quota in respect of its own exports and

was holding excess quota, over and above its own requirements. The quota is transferable and an exporter holding excess quota is entitled to transfer the same to other exporters in need of it. Since the holding of the quota is a pre-requisite for export of garments, direct nexus is established between the purchase/sale of export quota and the eligible activity of the business carried on by the assessee. Reliance is placed on CBDT Circular in F.No.133/131/97-TPL dated 23.2.98.

5. With respect to interest income, it is submitted that the imports of raw materials are under a Letter of Credit. The sanctioning of Letter of Credit facility is conditional upon the assessee maintaining a certain demarcated percentage of the value of Letter of Credit as margin money. The required margin money is kept in a time deposit account and is drawn only from out of the working capital limits sanctioned by the Bank. The deposits are not made out of surplus funds. Interest is paid by the appellant on working capital assistance and processing charges towards opening of Letter of Credit and interest is earned by the appellant on the term deposits that are marked by a lien. The components of interest, both earned and paid, have a direct nexus to the business activity.

6. Reliance was placed on the following decisions:

1. *CIT V. Karnal Co-operative Sugars Mills Ltd.* (243 ITR 2 (SC))
2. *CIT V. Bokaro Steels Ltd.* (236 ITR 315 (SC))
3. *CIT V. Shri Rama Multiteck Ltd.* (403 ITR 426 (SC))
4. *CIT V. Lakshmi Machine Works* (290 ITR 667 (SC))
5. *Arul Mariamman Textiles V. ACIT* (TCA No.909 of 2008 dated 07.08.2018)
6. *CIT V. Hewlett Packard Global Soft Ltd.* (403 ITR 453)
7. *CIT V. Motorola India Electronics P Ltd.* (2014 TIOL 87 Kar)
8. *Principal CIT V. Universal Precision Screws* (94 CCH 46 Del)

9. *Riviera Homes Furnishings Vs. Addl. CIT* (2015-TIOL-2729-HC Del)

10. *CIT V. Hritnik Exports P. Ltd.* (2014-TIOL-2507 (HC-Del))

11. *CIT V. Dee Kay Knitwears* (85 CCH 336(P&H))

7. Per contra, Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the respondent/Revenue relies on the concurrent orders of the lower authorities. According to him, the relief provided under section 10A is available only where the income is derived directly from the eligible activity, i.e., export, and such incomes as are earned from incidental sources, even if they are connected/attributable to the activity of export, would not be entitled to such relief.

8. Reliance is placed by the Revenue on the following decisions:

1. *India Comnet International V. ITO* (345 ITR 673 (SC))
2. *CIT V. Orchev Pharma (P) Ltd.* (354 ITR 227 (SC))
3. *Liberty India V. CIT* (317 ITR 218 (SC))
4. *CIT V. Menon Impex P. Ltd.* (259 ITR 403 (Mad))
5. *Sakthi Footwear V. ACIT* (317 ITR 194 (Mad))
6. *Rajkumar Impex (P) Ltd. V. DCIT* (15 DTR 118 (Mad))
7. *Cyber Peral Information Tech. Ltd. V. ITO* (399 ITR 310 (Mad))
8. *Dollar Apparels V. ITO* (294 ITR 484 Madras HC))
9. *India Comnet International* (304 ITR 322 (Mad))
10. *CIT V. K.K.Doshi & Co.* (245 ITR 849 (Bom))
11. *CIT V. Nagesh Knitwears P. Ltd.* (345 ITR 135 (Del))

9. We have heard the submissions of learned counsel and persued the papers in detail.

10. The assessee/appellant is a 100% export-oriented unit. The provisions of section 10B of the Income tax Act ('Act'), in terms of which relief is sought, provides for a deduction of such profits and gains as are derived by a 100% export-oriented unit from the export of articles, things or computer software for a period of ten (10) consecutive assessment years commencing with the assessment year relevant to the previous year in which the eligible activity commences. The methodology for computation as envisaged in sub-section (1) of section 10B is by way of a mathematical formula set out in sub-section (4) whereby the profits derived from exports of articles or things or computer software is stated to be the amount which bears to the profits of the business of the undertaking the same proportion as the export turnover in respect of such articles/things/computer software bears to the total turnover of the business carried on by the undertaking. We are, in the present appeal, concerned with the inclusion of income from sale of export quota and interest on margin money deposits in the component of 'profits of business of the undertaking'.

11. Export quota is mandatory for the activity of export and the APEC has been constituted as a nodal body to facilitate and regulate the formation of the quotas and the rate at which they are to be transacted in. The Central Board for Direct Taxes (CBDT) has issued a circular considering the position with regard to classification of income from quota sales stating as follows:

'The undersigned is directed to refer to PMO's DO No. 247/JS(5)/98 dated Feb 2, 1998 on the subject cited above. In the representation enclosed therein, a clarification has been sought by AEPC as to whether the premium received for the transfer of export quota would be treated as a part of export profit eligible for deduction u/s 80HHC of the Income Tax Act or not.

(ii) deduction u/s 80HHC is allowed on export profits with a view to encourage earnings in convertible foreign exchange. Since the premium payment on export quotas under electronic transfer system does not involve

any earnings in foreign exchange, this amount does not qualify for deduction u/s 80HHC.

(iii) Technically, export premium can be equated with the items mentioned in section 28(iia) (profit on sale of import licenses) section 28(iic) (duty drawback).

(iv) Therefore, the present item viz the premium on sale of export quota statutorily receive the same treatment as profit on sale of import license, cash assistance and duty drawback.'

12. Export reliefs such as Duty Drawback, REP Licences and DEPB have been brought within the ambit of business income in terms of sub-sections (iia) to (iie) of section 28 of the Act, vide Finance Act, 1990 with retrospective effect from 01.04.1962. Income from sale of export quota thus falls under the head 'business income' to be included in the computation of 'Profit and Gains of business or profession' entitled to relief under section 10B. It is relevant to note that there is no restriction whatsoever placed on what constitutes profits of the business of the eligible undertaking.

13. One may contrast in this context, the provisions of clause (baa) under the Explanation to Section 80 HHC of the Act that provides for a deduction in respect of income derived from the business of export of goods or merchandise. Section 80 HHC also provides for the computation of the deduction by way of a formula, similar to Section 10 B of the Act. However, in computing the component of 'profits of the business', Clause (baa) stipulates that 90% of all receipts from enumerated categories including export entitlements such as Duty Drawback and similar reliefs, that are part of business income be excluded from the computation of 'profits of the business' in the computation of relief under 80HHC. Such restriction is conspicuous by its absence in Section 10B. This issue is held in favour of the assessee and against the revenue.

14. As regards interest income, the assessee states that the assessee imports raw materials under a letter of credit. The sanctioning bank mandates that a percentage of the amount be maintained as margin money and retained as a Time deposit. The deposit is created out of the working capital limits sanctioned by the bank. Interest is paid on the working capital assistance and processing charges and earned on the lien marked deposits. Both the components of interest have a direct nexus to the business activity carried on by the assessee.

15. For this issue as well, the revenue relies on the concurrent order of the authorities below and relies on a slew of decisions. The decisions relied upon by the learned counsel for the Revenue are in the context of section 80IA of the Act falling under Chapter VI.

16. We are of the view that the basis of computation of the deductions enumerated under Chapter VI A is different from that set out for special deductions like section 10A and 10B. Section 80IA provides for a deduction of profits and gains derived by an undertaking or an enterprise from an eligible business. The provisions of section 80IA(1) state that where the gross total income of an assessee includes profits and gains derived by an undertaking or an enterprise from any eligible business, there shall, in accordance with and subject to the provisions be allowed, in computing the total income of the assessee, a deduction of an amount equal to 100% of the profits and gains derived from such business for a demarcated period. Relief under section 10A, on the other hand, is granted in respect of profits derived from the eligible activity of export, computed as a proportion of the profits of the business of the undertaking.

17. The above distinction has been noted by the Full Bench of the Karnataka High Court in the case of Hewlett Packard, to which one of us,

(Dr.Vineet Kothari J) is a party. The Delhi High Court in the case of *Riviera Home Furnishing Vs. Addl. Commissioner of Income Tax Range 15* [(2016) 65 Taxmann.com 287 (Delhi)] following its earlier decision in *Commissioner of Income Tax IV Vs. Hritnik Exports Pvt Ltd* [2014 TIOL 2507 HC DEL IT] has taken the identical view as we have in the present writ petition stating as follows:

In the considered view of the Court, the submissions made on behalf of the Revenue proceed on the basic misconception regarding the true purport of the provisions of Chapter VIA of the Act and on an incorrect understanding of Section 80A (4) of the Act. The opening words of Section 80A (4) read "Notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter.....". What is sought to be underscored, therefore, is that Section 80A, and the other provisions in Chapter VIA, are independent of Sections 10A and 10B of the Act. It appears that the object of Section 80A (4) was to ensure that a unit which has availed of the benefit under Section 10B will not be allowed to further claim relief under Section 80IA or 80IB read with Section 80A (4). The intention does not appear to be to deny relief under Section 10B (1) read with Section 10B (4) or to whittle down the ambit of those provisions as is sought to be suggested by Mr. Manchanda. Also, he is not right in contending that the decisions of the High Courts referred to above have not noticed the decision of the Supreme Court in Liberty India. The Karnataka High Court in CIT v. Motorola India Electronics Pvt. Ltd. (supra) makes a reference to the said decision. That decision of the Karnataka High Court has been cited with approval by this Court in Hritnik Exports (supra) and Universal Precision Screws (supra). In Hritnik Exports (supra) the Court quoted with approval the observations of the Special Bench of the ITAT in Maral Overseas Ltd. (supra) that "Section 10A/10B of the Act is a complete code providing the mechanism for computing the 'profits of the business' eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act.

18. A similar view has also been taken by the Calcutta High Court in the case of *Commissioner of Income Tax, Kolkata-IV Vs. Hindustan Gum & Chemicals Ltd* [(2016) 72 Taxmann.com.90 (Calcutta)].

19. The relief provided for in terms of Sections 10A, 10B and other special provisions addresses relief to be granted to specified categories of undertakings, specified either by the activities carried on by them or their location (in

STPI/FTZ/EOU). The provision is attracted to the entire income derived from the 'business of the eligible undertaking', as contradistinguished from the provisions of Section 80 IA falling under Chapter VI A, which provides for a deduction only in respect of the income 'derived from/by the eligible undertakings'. The use of the word 'business' in the context of the grant of the relief widens the scope of such benefit encompassing all incomes generated by such business activities.

20. Such special deduction is intended as a benefit to a special class of undertakings and as stated by the Supreme Court in the case of *Bajaj Tempo LTD. Vs. Commissioner of Income Tax, Bombay* [(1992) 3 SCC 78], '*Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it*'. We thus reject the reliance of the Revenue on the decisions referred to since they are distinguishable in law for the reasons stated above.

21. The assessee before us has lost throughout in the proceedings before the lower authorities and the issue has been held against it based on a decision of the Tribunal in the case of *ABI Showatech (India) Ltd. V. DCIT* that intum relies on the judgment of this Court in the case of *Menon Impex* (supra) and other orders of the Tribunal itself.

22. In the case of *Menon Impex* (supra), the legal distinction argued before us and noted above has evidently not been placed for consideration before that Bench which decides the matter against the assessee following the judgment of the Supreme Court in the case of *CIT V. Sterlings Foods* ((1999) 237 ITR 579), that has been rendered in the context of section 80I of the Act.

23. As far as the decision of this Court in *India Comnet* (supra) is concerned, the matter travelled in appeal to the Supreme Court which has, in its judgment reported in 354 ITR 673 remanded the matter to the Income Tax Appellate Tribunal for a decision afresh after detailed examination of the transaction in question.

24. In the light of the above discussion, we conclude stating that where the sole activity engaged in by the assessee is export, all incomes generated by the conduct of the business of the unit would be eligible to the benefits under section 10A/10B. The orders of the authorities below are reversed and the issue answered in favour of the assessee and against the Revenue. The substantial question of law is answered in favour of the assessee and against the Revenue. The Tax Case (Appeals) are allowed. No costs.

(V.K.,J)

(A.S.M.,J)

04.02.2019

Index : Yes/No

Speaking order/Non-speaking order

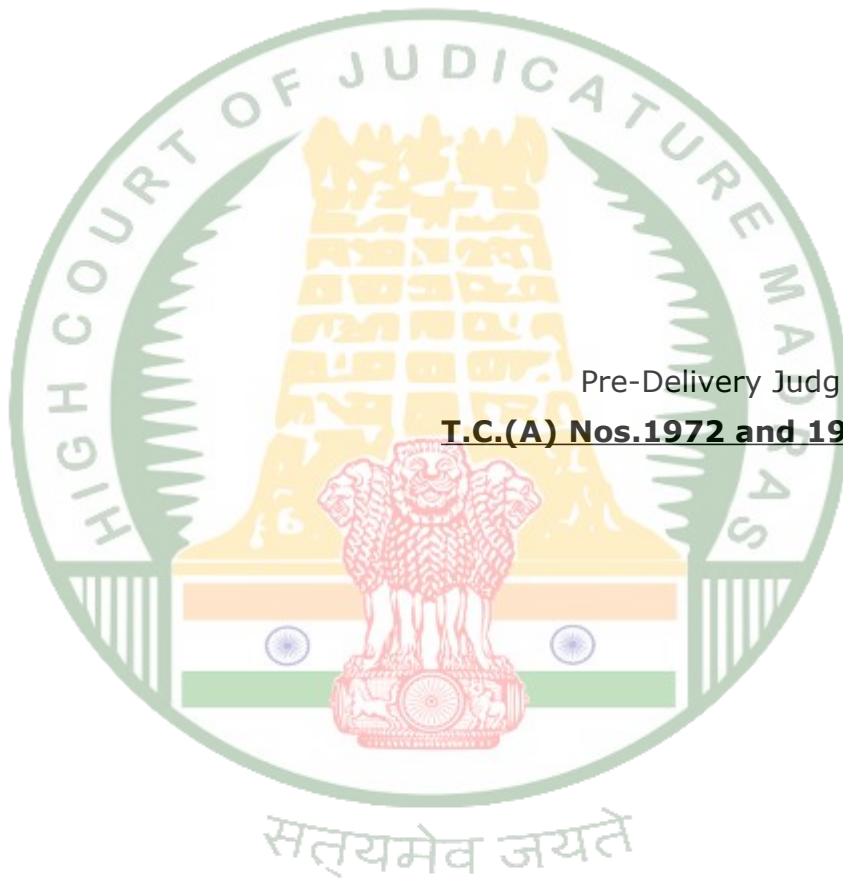
To

The Income Tax Appellate Tribunal, Chennai.

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DR.VINEET KOTHARI,J.
AND
DR.ANITA SUMANTH,J.

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Pre-Delivery Judgment in
T.C.(A) Nos.1972 and 1973 of 2008

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Dated: 04.02.2019