IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.802, 804 and 805 of 2009

Commissioner of Income Tax
Madurai. .... Appellant in the above T.C.As

Vs.

M/s.Ramco Industries Ltd.,
No.47, P.S.K. Nagar,
Rajapalayam - 626 108.
.... Respondent in the above T.C.As

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 19.12.2008 made in ITA Nos.1850, 2264 and 2365/Mds/07 for the Assessment Year 2003-04 and 2004-05 and 2004-05 respectively.

Against the Order of Commissioner of Income Tax (Appeal)-II, Madurai dated 05.09.2007 in PAN/G IT No. AACR5284J and dated 11.06.2007 in PAN/GIR No.AAACR5284J and arising out of the Assessment Orders of Deputy Commissioner of Income Tax Circle -I Virudhunagar dated 19.12.2006 in PAN/GIR No.AAACR5284J and Assistant Commissioner of Income Tax Circle - I Virudhunagar dated 08.03.2006 in PAN/GIR No.AAACR5284J.

For Appellant : Mr.M.Swaminathan
in all Appeals Sr.Standing Counsel

For Respondent : Mr.P.J.Rishikesh
in all Appeals

C O M M O N J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 (in short 'Act') aggrieved by the order passed by the Income Tax Appellate Tribunal (in short 'Tribunal') dated 19.12.2008 for the Assessment Years 2003-04 and 2004-05.

2. The two substantial questions of law which were admitted in the present appeals are quoted below for ready reference:

> '1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that waste cotton sales do not form part of the total turnover for the purpose of calculating the benefit under section 80HHC?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that discount and rebate do not form part of the total turnover for the purpose of calculating the benefit under section 80HHC?'

3. As far as the first substantial question of law is concerned, this Court has already decided the said issue in favour of the assessee in the case of M/s.Rajapalayam Mills Ltd., V. The Deputy Commissioner of Income Tax (T.C.A.No.342 of 2009 dated 02.01.2019) following the decision of the Supreme Court in the case of Commissioner of Income Tax VII, New Delhi V. Punjab Stainless steel Industries ((2014) 15 SCC 129). The relevant extract of the said judgment is quoted below for ready reference.

> '10. That apart, section 10B is a special provision that provides for a deduction from the income generated by eligible business activity. It is thus essential to determine the business activity of an assessee first and accordingly apply the formula to the income generated by such activity alone. Seen in that light, the appellant, admittedly, is not a dealer in scrap and sale of scrap cannot thus be termed to be business activity in so far as it is concerned. The CIT (A) has thus, rightly held that, at best, the income from sale of scrap would only go to reduce the cost of acquisition of raw material.
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> 11. Furthermore, the phrase 'total turnover' has not been defined in s.10B and would thus assume a meaning as commonly understood in commercial parlance. The total turnover of the business carried on by the undertaking would thus be the sum total of all incomes generated by the business activities carried on by the appellant. In the light of our conclusion earlier to the effect that income from the sale of scrap, or cotton scrap as in the present case, is, but only an incident of the business of manufacture of textile yarn, the assessee not being a dealer thereof, such income will not will not come within the ambit of the word 'total turnover'.

12. Finally, the provision is a complete code inserted specifically to encourage the activity of exports. Its interpretation should thus be in tandem with, and advance the aforesaid avowed object of the provision.

13. The Supreme Court, in the case of Commissioner of Income Tax VII, New Delhi V. Punjab Stainless steel Industries ((2014) 15 SCC 129), has considered the question of inclusion of income from sale of scrap in the component of 'total turnover', being the denominator in the formula for computation of relief under s.80HHC of the Act. In almost identical facts as we are faced with, the Bench concludes that the proceeds generated from sale of scrap is not liable to be included in total turnover, as turnover, as commonly understood, would include only such incomes as are generated by business activities. Though this judgement has been rendered in the context of s.80 HHC, the rationale thereof is applicable on all fours in the present case as well. '

4. Accordingly, the first substantial question of law is answered in favour of the assessee and against the Revenue.

5. As far as the second substantial question of law is concerned, the learned Tribunal has written a clear finding of fact in paragraph 4.3 that as far as discount and rebate are concerned, since the assessee has not received the said sum at all, the same would not be included in the total turnover.

6. The Assessing Authority in the present case in paragraph 4.1 of his assessment order had observed that net figure of value of Rs.1,49,83,11,532/- is the net figure after excluding discounts, rebates, service charges, commission, transportation etc., which were part and part of the sale bills raised and since the assessee had however admitted only a sum of Rs.1,48,50,40,423/- on a total turnover, the same was not in order. The Assessing Authority further observed that since netting is not allowed, the total sales turnover has to be taken at Rs.1,88,88,54,052/-. Thus the Assessing Authority disallowed the net turnover after deducting discounts and rebates given by the said Company to its customers and took the gross turnover for the purpose of computing the benefit of Section 80HHC.

7. The Commissioner of Income Tax (Appeals) upheld the order of the Assessing Authority, whereas the learned Tribunal in its appeal allowed the appeal of the assessee to the extent observed above and in our opinion rightly so.

8. We are of the opinion that the discount and rebate given by the assessee company to its customers cannot form part of the total turnover, as there is no receipt to that extent by the

assessee in its hands and therefore, the discount and rebate cannot be added back to the turnover disclosed by the assessee for the purpose of computing the benefit of Section 80HHC.

9. Therefore, the second substantial question of law also deserves to be and is accordingly answered in favour of the assessee and against the Revenue.

10. The appeals of the Revenue is therefore liable to be dismissed and the same are accordingly dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax (Appeals) II,
Madurai.

3.The Deputy Commissioner of Income Tax,
Circle I, Virudhunagar.

4.The Assistant Commissioner of Income Tax,
Circle-I, Virudhunagar.

+2cc to Mr. P.J.Rishikesh,Advocate, S.R.No. 6935
+1cc to Mr. M.Swaminathan, Advocate, S.R.No. 6609

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GMR(CO)
GN(07/03/2019)