

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.4.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos.559 & 560 of 2013

Commissioner of Income Tax,
Coimbatore.

Appellant in both Appeals

Vs.

M/s.Chettinad Lignite Transport Services
Private Limited,
43, Race Course Road,
Coimbatore - 641 018.
PAN: AABCC7357G

Respondent in both Appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 18.11.2011 made in ITA Nos.1312/Mds/2011 and ITA No.1313/Mds/2011 against the Appellate order of the Commissioner of Income -Tax(Appeals)-I, Coimbatore dated 25.04.2011 and made in Appeal Nos.211/2010-11 & 210/2010-11 for the Assessment year 2007-08 & 2008-09; and against the Assessment order of the Assistant Commissioner of Income Tax, Company Circle I(1), Coimbatore, dated 24/12/2010 and made in PAN/GIR No.AABCC7357G for te Assessment year 2007-08 & 2008-09.

For Appellant : M/s.T.R.Senthilkumar
Sr. Standing Counsel assisted by
Ms.K.G.Usharani

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar
Padmanabhan

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J.)

The Revenue has filed these Appeals under Section 260-A of the Income Tax Act, 1961, raising the following substantial questions of law arising from the orders of the learned Tribunal dated 18.11.2011, whereby the learned Tribunal allowed the Appeals for the Assessment Years 2007-2008 and 2008-2009 and

held that the Assessee is entitled to the benefit of deduction under Section 80IA of the Act:-

" i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, when the assessee is only a sub-contractor?

ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, without examining the effect of explanation inserted at the end of the Section by Finance Act 2007 with retrospective effect from 1.4.2000 which was also substituted by Finance (No.2) Act, 2009 with retrospective effect from 1.4.2000?

iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, though the assessee did not fulfil the condition laid down in Section 80IA (4) of having a contract with any Government/authority referred to in that section?

iv) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is eligible for deduction under Section 80IA, the assessee did not satisfy proviso to Section 80IA(4) inasmuch as there is no transfer of infrastructure facility?"

2. Learned counsels appearing for the parties brought to our notice that the controversy involved in the present Appeals is covered by the Judgment of this court dated 6.3.2019 in the case of the same Assessee in T.C.A.Nos.741, 1266 of 2009 and 162 of 2015 wherein this court has held as under:-

" 8. From a reading of the aforesaid Provisos to Section 80IA(4), it is clear that the Legislature intended to extend the said benefit under Section 80IA of the Act to an enterprise involved in (i) developing or; (ii) operating and maintaining or; (iii) developing, operating and maintaining any infrastructure facility. The term "infrastructure facility" has been defined in the Explanation and the same includes a toll road, a bridge or a rail

system, a highway project, etc. These are, obviously, big infrastructure facilities for which the enterprise in question should enter into a contract with the Central Government or State Government or Local Authority. However, the Proviso intends to extend the benefit of the said deduction under Section 80IA of the Act even to a transferee or a contractor who is approved and recognised by the concerned authority and undertakes the work of the said development of infrastructure facility or only operating or maintaining the same. The Proviso to sub-section (4) stipulates that subject to the fulfillment of conditions, the transferee will be entitled to the said benefit, as if the transfer in question had not taken place. It has been found by the Assessing Authority himself, in the present case, that the present Assessee M/s. Chettinad Lignite Transport Services Private Limited under an Agreement dated 16.04.2002, captioned as Lignite Transport System with M/s. ST-CMS Electric Company Private Limited, had undertaken the work of developing the said railway sidings and was operating and maintaining the same. The only ground on which, the Assessing Authority denied the said benefit was that the Assessee himself did not enter into any such contract with the Railways or with the Central Government.

9. The learned Tribunal, however, in our opinion, rightly applied the Proviso to Section 80IA (4) of the Act and held that since the Assessee was recognised as contractor for these railway sidings, which undoubtedly fell under the definition of "infrastructure facility", it was entitled to the said benefit under Section 80IA of the Act. The grounds on which the Assessing Authority denied the said benefit to the Assessee ignoring the effect of Provisos to Section 80IA(4), therefore, could not be sustained. The learned Tribunal, in our opinion, has rightly held that the Proviso does not require that there should be a direct agreement between the transferee enterprise and the specified authority for availing the benefit under Section 80IA of the Act. There is no dispute before us that the Assessee was duly recognised as transferee or assignee of the principal contractor M/s. ST-CMS Company Private Limited and was duly so recognised by the Railways to operate and maintain the said railway sidings at Vadalur and Uthangalmangalam Railway Stations. The findings

of fact with regard to the said position recorded by the learned Tribunal are, therefore, unassailable and that clearly attracted the first Proviso to Section 80IA(4) of the Act.

10. The learned counsel for the Revenue relied upon a decision of this Court in the case of M/s.Covanta Samalpatti Operating Private Limited, Chennai-20 v. The Assistant Commissioner of Income Tax, Company Circle I (3), Chennai-34, reported in (2018) 93 Taxmann 38. In the said case, the claim of the Assessee company, which was engaged in power generation, for deduction under Section 80IA of the Act was denied by the Revenue on the ground that the Assessee Undertaking had not been set up for generation and distribution of power and that the Assessee was only a contractor for the maintenance work of power plant, which was owned by Samalpatti Power Corporation Private Limited (SPCL). On these facts, the Court held that the Assessee was not entitled to deduction under Section 80IA of the Act. We do not find any parity of facts of the said case with the facts available before us. The power generating companies are entitled to deduction under Section 80IA of the Act in different sub clauses viz., under Section 80IA(4)(iv) of the Act. Where there is no such Proviso, as is available in clause (i) of Section 80IA(4) of the Act, which deals with deduction to enterprise involved in developing, operating and maintaining the infrastructure facilities. Obviously, if the Assessee is getting only fees for the maintenance of certain power generating plant, as was the case before the Co-ordinate Bench of this Court in Covanta case (supra), he may not be entitled to such deduction, but the fact situation before us is entirely different and, therefore, we do not find any support from the said case cited by the learned counsel for the Revenue.

11. We are, therefore, of the considered opinion that there is no merit in these appeals filed by the Revenue and the questions of law framed above deserve to be answered in favour of the Assessee and against the Revenue. We hereby do so. The appeals preferred by the Revenue deserve to be dismissed and accordingly, the same are dismissed. No costs."

3. The present Appeals deserve to be disposed of in the same terms. Accordingly, they are dismissed. No order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

ssk.

To

1. The Registrar,
Income Tax Appellate Tribunal,
Madras "B" Bench ,
Chennai.
 2. The Commissioner of Income Tax,
Coimbatore.
 3. The Assistant Commissioner of Income-tax,
Company Circle-1(I), Coimbatore.
 4. The Commissioner of Income Tax (Appeals)-I, Coimbatore
- +1cc to M/s.Subbaraya Aiyar, Advocate SR.No.32365

PA(CO)
GMV(18/06/2019)

T.C.(A) Nos.559 & 560 of 2013

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