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In the High Court of Judicature at Madras

Dated : 09.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.426 of 2019

The Principal Commissioner of
Income Tax, Central-2, Chennai ...Appellant/Respondent
Vs

M/s.Standard Fireworks Pvt. Ltd.,
Sivakasi ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 to set aside the order dated 26.6.2018 made in ITA.No.1619/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench against the order dated 04.05.2017 in I.T.A. 210/2016-2017 on the file of the Commissioner of Income Tax(Appeals) 19, Chennai against the assessment order dated 31.12.2016 against PAN No. AACCS1480M by the Assistant Commissioner of Income Tax, Central Circle 2, Madurai

For Appellant : Mr.T.R.Senthilkumar
For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the appellant - Revenue and Mr.A.S.Sriraman, learned counsel accepting notice for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 26.6.2018 in ITA.No.1619/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2014-15.

3.The Revenue has filed this appeal by raising the following substantial questions of law :



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"i. Whether the Appellate Tribunal is correct in law in holding that the assessee is eligible to claim deduction under Section 54F of the Income Tax Act, when the property sold at Bangalore was only a depot/godown/storage place and not an industrial undertaking ?

ii. Whether the Appellate Tribunal was justified in directing the Assessing Officer to grant deduction under Section 54G of the Act with respect to the long term capital gain earned by the assessee on the sale of its godown situated in Bangalore, an urban area and which has been relocated in a non urban area, in the outskirts of Sivakasi town?

iii. Whether the Appellate Tribunal was correct in not appreciating that the assessee had obtained LE-3 licence under the Explosives Rules, 2008 for its Bangalore property and in terms of this licence, no manufacturing activity could be conducted in the subject Bangalore property and is also not an 'industrial undertaking'? And

iv. Whether the Appellate Tribunal is correct in law in holding that the assessee is eligible to claim deduction under Section 54F of the Income Tax Act on the amount of Rs.2,99,50,000/-, which was seized by the Department without taking cognizance of the lack of intention on the part of the assessee to make the deposit of the said amount in Capital Gains Accounts Scheme?"

4. Though the Revenue has raised four substantial questions of law, it would suffice to answer substantial question of law No.1 and therefore, we entertain this appeal on substantial question of law No.1 alone, namely

"Whether the Appellate Tribunal is correct in law in holding that the assessee is eligible to claim deduction under Section 54F of the Income Tax Act, when the property sold at Bangalore was only a depot/godown/storage place and not an industrial undertaking ?"

5. The issue, which falls for consideration, is as to whether the assessee is eligible to claim deduction under Section 54F of the Act when the assessee sold an explosive godown/property at Bangalore and invested in a property located in a non urban area i.e in the outskirts of Sivakasi town.



6. The Assessing Officer, while completing the assessment, vide order dated 31.12.2016, under Section 143(3) read with Section 153A of the Act, opined that the property sold by the assessee was only a godown and used for storing fireworks and that it could not be interpreted to mean an 'industrial undertaking'. Accordingly, the claim for deduction under Section 54G was disallowed and an amount of Rs.50,36,72,654/- was assessed under the head 'capital gains'.

7. As against the order of assessment dated 31.12.2016, the assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals)-19, Chennai [for short, the CIT(A)], who, by order dated 04.5.2017, concurred with the findings of the Assessing Officer and while accepting the fact that the land in question was used for the purposes of the business of an industrial undertaking, denied the relief to the assessee on the ground that the sale of the store area land in Bangalore is one off transaction not specifically effected in the course of or in consequence of shifting of any industrial undertaking.

8. As against the order passed by the CIT(A) dated 04.5.2017, the assessee preferred an appeal before the Tribunal. After considering the provisions of Section 54G(1) of the Act, the Tribunal took note of the business activities of the assessee and the meaning assigned to the expression 'industrial undertaking' and held that the interpretation to be given should be in such a manner that it promotes economic growth and development and it should aid an industry. Keeping the said principle in mind, the Tribunal considered the facts of the assessee's case, noted that the assessee shifted its godown storing hazardous products to a non urban area and that the activity carried on in the godown being storage and repacking, which is severable from the other activities of the industrial establishment and held that the assessee is entitled to claim exemption of capital gains as per the provisions of Section 54G of the Act. While rendering such a finding, the Tribunal noted that the factual position was not in dispute. The Revenue is on appeal before us challenging such finding.

9. In our considered view, the Assessing Officer failed to take note of the vital factor namely that the property, which was sold by the assessee in Bangalore, was a 'magazine'. Rule 2 (31) of the Explosives Rules, 2008 defines the word 'magazine' to mean a building or structure (other than an explosives manufacturing building) intended for storage of explosives, specially constructed in accordance with the specification provided under these Rules or of a design and approved by the Chief Controller. The expression 'Chief Controller' is defined under Rule 2(9) of the Explosives Rules, 2008 to mean the Chief Controller of Explosives.



10. Section 4(h) of the Explosives Act, 1884 defines the word 'manufacture' in relation to an explosive, which includes the process of (1) dividing the explosive into its component parts or otherwise breaking up or unmaking the explosive, or making fit for use any damaged explosive; and (2) re-making, altering or repairing the explosive. Thus, the definition of the word 'manufacture' as defined under the Explosives Act, 1884 is an inclusive definition and storing of bulk quantity of explosives and repacking for retail sale would undoubtedly fall within the meaning of the word 'manufacture'. In terms of Rule 71 of the Explosives Rules, 2008, a person holding licence for possession of explosives granted under these Rules shall store the explosives only in the premises specified in the licence. Thus, possession, usage and sale of explosives are strictly regulated under the provisions of the Explosives Act and the relevant Rules framed thereunder.

11. Unfortunately, the Assessing Officer did not take note of this vital factor, but was guided by the common parlance test given to an industrial undertaking. One more factor, which the Assessing Officer lost sight of, was the manner, in which, the first limb of Section 54G(1) of the Act is worded wherein the transfer of a capital asset includes machinery or plant or building or land or any rights in the building or land used for the purpose of business of an industrial undertaking situated in an urban area. The second limb of Section 54G(1) of the Act is what had weighed in the mind of the Assessing Officer while denying the deduction under Section 54G of the Act. However, what was important to note is that where the capital gains arising from transfer of capital asset, being machinery or plant or land or building used for the purposes of business of an industrial undertaking situated in an urban area effected in the course of or in consequence of the shifting of such industrial undertaking to any area other than an urban area, the assessee is entitled to the benefit of deduction under Section 54G of the Act.

12. The scheme of the Explosives Act and the relevant Rules framed thereunder would clearly bring a 'magazine', which was referred to by the Assessing Officer as a godown to qualify to be a place used for the purpose of business of an industrial undertaking and in fact, going by the definition of the word 'manufacture' under the Explosives Act, the activity done by the assessee namely storage and repacking would also, in our opinion, fall within the definition of the word 'manufacture'. The Tribunal, in paragraph 4.6 of its order, has specifically recorded that the facts are not in dispute. In the light of the above, we find that the interpretation given by the Tribunal to the facts of the case of the assessee is perfectly legal and valid. For the above reasons, the Revenue has not made out any



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ground to interfere with the order passed by the Tribunal.

13. Accordingly, the above tax case appeal is dismissed. The substantial question of law is answered against the Revenue. No costs.

s/d-
Assistant Registrar (CO)

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Sub-Assistant Registrar

To

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

2. The Commissioner of Income Tax (Appeals) Chennai.

3. The Assistant Commissioner of Income Tax
Central Circle 2 Madurai

+1 CC to Mr. T.R. Senthilkumar, Advocate sr 58387.

+1 CC to Mr. S. Sridhar, Advocate sr 57425.

TCA.No.426 of 2019

GJII (CO)
SP (05/08/2019)