IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
&
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.1035 of 2015

Commissioner of Income Tax,
Corporate Circle 3(1),
Chennai 600 034. ..Appellant/Appellant

Versus

M/s.Ticel Bio Park Limited,
No.5, Taramani Road,
Taramani, Chennai - 600 113.
..Respondent/Respondent
PAN: AABCT 5758 L

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras, 'B' Bench, Chennai, dated 15.05.2015 in ITA No.257/Mds/2015.

For Appellant : Mr.M.Swaminathan,
Standing Counsel assisted by
for Mrs.V.Puspha, Standing Counsel

For Respondent : Mr.R.Venkatnarayanan,
for Subbaraya Aiyar Padmanaban

JUDGMENT

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. This tax case appeal has been filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras “B” Bench, dated 15.05.2015 in I.T.A.No.257/Mds/ 2015.

3.Mr.M.Swaminathan, learned Standing Counsel appeared for the department/appellant and Mr.R.Venkatnarayanan, learned counsel appeared for the respondent/assessee.

4. The appellant filed the present appeal and suggested the following substantial questions of law:-

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the lease rent income from providing build up lab space or industrial use to various lesses would constitute income from business and was eligible for deduction u/s 80IA?
>
> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate was right in allowing the claim of deduction u/s 80IA(4)(iii) when provisions of section 80IA(4)(iii) are applicable only for the profits derived out of development and sale of built up space to a person operating an maintaining the said space either the developer himself or to a third party and not applicable for rented property?"

5.The learned Standing Counsel for the department has submitted that the lease rental received by the respondent/assessee will not constitute income from the business and it is eligible for deduction under Section 80IA. The learned counsel also contended that the Tribunal, without considering the case on merits, has dismissed the appeal as under:-

> "3. After hearing both the sides, we are of the opinion that similar issue was considered by this Tribunal in assessee's own case for the assessment year 2008-09 in ITA No.2123/Mds/2011, dated 2.4.2013, wherein deduction u/s.80IA(4)(iii) of the Act was granted to the assessee on the income earned from let out of built up lab space by providing infrastructure facilities. While deciding this issue, the Tribunal, following the judgment of the Jurisdictional High Court in the case of CIT v. Elnet Technologies Ltd. in Tax Case (Appeal) No.391 and 392 of 2007 dated 15.10.2012, has observed as follows:-
>
> > "7. We have heard both sides, perused the orders of the Assessing Officer and CIT (A). After giving thoughtful consideration to the rival contentions, in the backdrop of the facts stated hereinabove, we are of the view that the precise question involved in the appeal is as to whether the assessee,

> who has raised rental income etc. by providing infrastructure facilities in an industrial part is entitled for deduction under section 80lA (4)(iii) or not. Proceeding to decide this question, we find from the case law cited by the assessee in CIT vs. Elnet Technologies Ltd. (supra) that the Hon'ble Jurisdictional High Court has settled the very issue in favour of the concerned assessee and against the Revenue in its arguments. No distinguishing features have either been pointed out by the Revenue nor they emanate from the facts of the case. Accordingly, we confirm the findings of the CIT(A) under challenge."

In view of this, we are inclined to hold that the assessee is entitled for deduction u/s.80IA(4)(iii) of the Act."

He, therefore, contended that the Tribunal has not considered the case on merits and prayed for setting aside the order passed by the Tribunal.

6. On the other hand, the learned counsel for the respondent/assessee has pointed out that the case on hand is covered by the Judgment of this Court rendered in the case of CIT v. Elnet Technologies Ltd. in Tax Case (Appeal) No.391 and 392 of 2007 dated 15.10.2012 and in the case of CIT vs. Chennai Properties and Investments Ltd. He submitted that this Court, following the aforesaid two Judgments, has passed a detailed order in the case of Principal Commissioner of Income Tax-4 v. M/s.Khivraj Motors Pvt. Ltd., in TCA.Nos.314&315 of 2017, dated 27.07.2020, and therefore, he prayed for dismissal of the present appeal.

7. We have heard the learned Standing Counsel for the appellant/department as well as the learned Counsel appearing for the respondent/assessee and perused the materials available on record.

8. The issue involved in the case on hand is no longer res-integra and it is already covered by the Judgment of this Court rendered in the above said Judgments as stated by the respondent/assessee. Therefore, we do not see any question of law arising for our consideration in the present appeal. The views of the authorities below are correct and in accordance with law and do not call for any interference. Accordingly, the appeal is dismissed.

9.In the result, this Tax Case Appeal No.1035 of 2015 is 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), Chennai.
3. The Assistant Commissioner of Income Tax,
   Company Circle-III(2) Chennai-34.

+1cc to M/s.Subbaraya Aiyar, Padmanabhan & Ramamani, Advocate in SR.NO..27922

TCA.No.1035 of 2015

SSD(CO)
RV(05/11/2020)