IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

Tax Case (Appeal) No.377 of 2013

The Commissioner of Income tax,
Chennai. ... Appellant

Vs.

M/s.OPG Energy P. Ltd.,
No.17, Mooker Nallamuthu Street,
Chennai 600 001. ... Respondent

Prayer: Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 3.6.2011 made in ITA No.1014/Mds/2010 Preferred against the order of the Commissioner of Income Tax(Appeals)-V, made in ITA.No.351/08-09, dated 26-02-2010, against the order of the Deputy Commissioner of Income Tax, Company Circle V(1), Chennai-34, dt.26-12-2008, made in PAN.AAACO4724G.

For Appellant : Mr.T.Ravikumar, Senior Standing Counsel

For Respondent : Mr.Sridhar

JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The present Appeal has been filed by the Revenue under Section 260-A of the Act raising the following purported substantial questions of law as against the order of the learned Tribunal dated 3.6.2011 for the Assessment Year 2006-2007:-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to claim deduction under Section 80IA for captive power consumption relating to the assessment year

2006-07?"

2. The issue involved is as to whether the benefit of such deduction under Section 80IA of the Act to the new Industrial Undertaking is available to the Assessee to the extent of power charges realised by it from the Group Company situated within the same premises where the Assessee manufactures or produces Electricity energy.

3. The learned Tribunal, by its impugned order, allowed the claim of the Assessee following the jurisdictional High Court's decision in the case of CIT v. Thiyagaraja Mills Limited (T.C.A.Nos.68 to 70 of 2010 decided on 7.6.2010).

4. Para 15 and 16 of the order of the learned Tribunal contains the said portion allowing the said claim of the Assessee, which are quoted below for ready reference:-

> "15. We have perused the orders and heard the rival submissions. Whether billings for power captively consumed would be eligible for deduction under sec.80IA of the Act is no more an issue which is resintegra insofar as this Tribunal falling within the jurisdiction of Hon'ble Madras High Court, is concerned. It is for the reason that Hon'ble jurisdictional High Court has dealt with this matter elaborately in the case of CIT vs. Thiagarajar Mills Ltd. (TCA 68 to 70 of 2010 dated 07-06-2010). Relevant paras 8 and 9 of the judgment of the Hon'ble jurisdictional High Court in the above case are reproduced below:-
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> > "8. The contention that only whatever power generated from the sale to an outsider of the electricity board, and the profit or gain derived by such sale alone can be taken as profit or gains derived by the assessee as mentioned in Sec. 80IA(1) of the Act, has been rejected by the Tribunal in the order impugned. In our considered view, the Tribunal was well justified in having rejected such a stand of the appellant. Having referred to sec 80IA(1) of the Act, we are also convinced that what are all to be satisfied in order to be eligible for the deduction as provided under sub-sec.(1) of Sec.80IA, the assessee should have set up an undertaking or an enterprise and from and out of such an undertaking or an enterprise set

up, any profit or gain is derived, falling under sub-sec. covered by sub-sec.(4) of Sec.80IA of the Act such profit or gain derived by the assessee can be deducted in its entirety for a period of 10 years starting from the date of functioning of the set up. The contention that profit or gains can be claimed by the assessee only if such profit or gain is derived by the sale of its product or power generated to an outsider cannot be the manner in which the provisions contained in Section 80IA(1) can be interpreted. The expression 'derived'; used in the said Sec.80IA(1) in the beginning as well as in the last part of the sub-sec.(4) makes it abundantly clear that such profit or gain could be obtained by one's own consumption of the outcome of any such undertaking or business enterprises as referred to in sub-sec.(4) of Sec.80IA. The dictionary meaning of the expression 'derive' in the New Oxford Dictionary of English states 'obtaining something from a specified source'. In Sec.80IA(1) also no restriction has been imposed as regards the deriving of profit or gain in order to state that such profit or gain derived only through an outside source alone would make eligible for the benefits provided in the said Section.

9. Therefore, there is no difficulty in holding that captive consumption of the power generated by the assessee from its own power plants would enable the respondent/assessee to derive profit and gains by working out the cost of such consumption of power inasmuch as the assessee is able to save to that extent which would certainly be covered by Sec.80IA (1). When such will be the outcome of own consumption of the power generated and gained by the assessee by setting up its own power plant, we do not find any lack of merit in the claim of the respondent/assessee when it claimed by relying upon Sec.80IA(1) of the Act by way of deduction of the value of such units of power consumed by its own plant by way of profit and gains for the relevant assessment years."

16. Since the above decision of the jurisdictional High Court effectively overrules the coordinate Bench decision in Chettinadu Cement Corpn Ltd. (supra), we are of the opinion that reliance placed by ld. DR on the latter decision is of no support to the Revenue. We therefore do not find any reason to interfere with the order of the CIT (A) in this regard. In the above circumstances, ground No.3 of the Revenue stands dismissed."

5. The learned Senior Standing Counsel Mr.T.Ravikumar appearing for the Revenue fairly submitted that subsequently the said decision of the Madras High Court was followed by another Bench of Madras High Court in Tamil Nadu Petroproducts Limited v. Assistant Commissioner of Income Tax ((2011) 13 taxmann.com 139 (Madras)).

6. In view of the aforesaid submissions made at the Bar by the learned counsels, the controversy is no longer res integra and the Assessee is clearly entitled to the benefit under Section 80IA of the Act on the Power Charges realised by it from their Sister Companies or Group Companies though situated in the same premises for the Electricity energy produced by it.

7. Therefore, we do not find any question of law to be arising in the present Appeal and the same is devoid of merits and it is liable to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

ssk.

To

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

2. The Commissioner of Income tax (Appeal)-V
Chennai.

3. The Deputy Commissioner of
Income Tax,
Co.Cir.V(1), Chennai.

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