IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2020

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.Nos.260 & 261 of 2018

The Principal Commissioner of Income Tax I
No.63, Race Course Road
Coimbatore. .. Appellant / Respondent (in both appeals)

Versus

M/s.Jewels Magnum
No.333, First Floor, Big Bazaar Street
Coimbatore - 641 001.
PAN : AAG FJ 3110 Q .. Respondent / Appellant (in both appeals)

Common Prayer:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras ''C'' Bench, Chennai, dated 19.02.2016 in I.T.A.No.2311/Mds/2015 and ITA.No.2312/Mds/2015, respectively against the order of the Commissioner of Income Tax Appeals II,Coimbatore dated 16.12.2015 in ITA.NO.465/2014-2015 & 149/14-15 and against the order of the Assistant commissioner of Income Tax,circle III,Coimbatore dated 20.03.2014 and 31.10.2014 made in PAN NO.AAGRFJ3110 Q for the Assessment Year 2011-2012 & 2012-2013.

For Appellant : Mr.T.R.Senthil Kumar
(in both appeals) Senior Standing Counsel
assisted by Ms.K.G.Ushnarani
Junior Standing Counsel

For Respondent : Mr.R.Sivaraman
(in both appeals)

COMMON JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals filed by the Revenue, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) are directed against the orders, dated 19.02.2016 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, ('the Tribunal' for brevity), in I.T.A.No.2311/Mds/2015 and ITA.No.2312/Mds/2015, for the assessment year 2011-12 & 2012-13.

2. These appeals are entertained on the following substantial questions of Law:

(i) Whether the Appellate Tribunal is correct in granting deduction u/s.10AA of the I T Act, when the assessee has violated the terms and conditions stipulated in agreement with Development Commission, MEPZ, SEZ ?

(ii) Whether the Appellate Tribunal is correct in ignoring the opinion of Government Approved Valuer, wherein he differentiated between medallion, coin and pendants

3. We have elaborately heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned counsel for the appellant-Revenue and Mr.R.Sivaraman, learned counsel for the respondent-assessee.

4. The short question that falls for consideration is whether the assessee is entitled to the benefit of Section 10AA of the Act. The said provision is a special provision in respect of newly established units in Special Economic Zone. Section 10AA of the Act states that in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section (2) of the Special Economic Zones Act, 2005, from his unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before 1st day of April 2011, would be entitled to deductions as mentioned in 1(i) and 1(ii) in Section 10(A)(1). Thus, the assessee to be entitled to the benefit of Section 10(A)(A), the first condition to be fulfilled is that the assessee should be an entrepreneur as defined under Section 2(j) of Special Economic Zone Act, 2005. The said provision defines :

> " 2(j) "enterpreneur" means a person who has been granted a letter of approval by the Development Commissioner under sub-section 9 of Section 15."

Undisputed fact is that the assessee was granted a Letter of Approval and therefore, assessee would fall within the definition of an entrepreneur as defined under Section 2(j) of

Special Economic Zones Act, 2005. The Assessing Officer sought to deny the benefit on the ground that the assessee has violated the terms and conditions in the Letter of Approval, which was granted by the Development Commissioner, for manufacture of bangles and pendants. The basis for arriving at such a conclusion is on the ground that the Development Commissioner initiated proceedings under the provisions of the Foreign Trade (Development and Regulations) Act 1992, as the assessee had violated the conditions in the Letter of Approval, which culminated in issuing the order of penalty to them vide order dated 03.9.2014.

5. It is to be noted that the respondent-assessee had challenged the said order, by filing a writ petition in W.P.No.25765 of 2014. The said writ petition was allowed, by order dated 11.02.2015, setting aside the order of penalty dated 03.9.2014, and remanded back to the Development Commissioner, MEPZ-Special Economic Zone, Tambaram, Chennai, with a direction to the said authority to adjudicate the show cause notice. On such remand, the authority took up that matter for consideration and passed an order dated 20.04.2015, imposing penalty on the assessee, under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992. This order was put to challenge by way of writ petition in W.P.No.13538 of 2015. When the writ petition was pending, the assessments were completed under Section 143(3) of the Act, for both the assessment years i.e., AY 2011-12 and AY 2012-13 on 20.03.2014 and 31.10.2014 respectively.

6. The assessee carried the matters on appeal in ITA.No.419/14-15 (for AY 2011-12) and ITA.No.465/14-15 (for AY 2012-13) before the Commissioner of Income Tax (Appeals), who dismissed both the appeals vide order dated 16.12.2015. This was because the Development Commissioner had held that the assessee had violated the terms and condition stipulated in the Letter of Approval by manufacturing medallions instead of pendants, and exporting the same. At that relevant time, the writ petition filed by the assessee in W.P.No.13538 of 2015, challenging the order of penalty, appears to have been pending. Aggrieved by the dismissal order dated 16.12.2015, the assessee had preferred appeals in ITA.Nos.2311/Mds/2015 & 2312/Mds/2015, before the Tribunal. The assessee was successful in convincing the Tribunal to hold that there is no violation of the Letter of Approval and there is no marked difference or distinction between a pendant and a medallion. The writ petition which was pending before this Court came to be allowed vide order 13.02.2017.

7. It is the submission of Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant-Revenue that

the writ petition was allowed by this Court, based upon the order of the Tribunal.

8. We have gone through the order passed in W.P.No.13538 of 2015 and found that it was not the only ground on which the writ petition was allowed and the Court has also given a specific finding that the medallion is termed as a piece of jewellery in the shape of a medal worn as pendant. More importantly, the learned Writ Court has referred to the letter of the Customs Department dated 12.03.2014, addressed to the Assistant Development Commissioner of MEPZ, SEZ, wherein they have clarified that medallions are also pendants. This was also taken note of by the learned Writ Court and quashed the order of penalty imposed by the Development Commissioner under the provisions of the Foreign Trade (Development and Regulations) Act 1992. Thus, the basis or the substratum, based on which the assessment was completed denying the benefit to the assessee, did not no longer survive. That apart, what is required to be seen for extending the benefit under Section of the 10AA Act is, to see whether the assessee is an entrepreneur as referred to, defined under Section 2(j) of the Special Economic Zone Act. No doubt, the assessee falls within the said definition, as they had been granted a Letter of Approval by the Development Commissioner under Section 15(9) of the Special Economic Zones Act. That apart, the competent authority who intends to certify as to what would be the date of commencement of production, would be the Development Commissioner and not the Income Tax Officer. Even in the order dated 03.9.2014, imposing penalty on the assessee, which was subsequently quashed, the Development Commissioner has recorded that the date of commencement of production as 14.04.2009. This date is binding on the Income Tax Department, as the competent authority to certify the date of production is the Development Commissioner and not the Assessing Officer.

9. It was pointed by Mr.R.Sivaraman, leaned counsel appearing for the assessee/respondent that the assessee has fullfiled the terms and conditions of the Letter of Approval and the nett foreign exchange earning of the assessee for the years 2010, 2011, 2012 & 2013 is Rs. 74.49 crores.

10. Considering all these facts, we are of the view that the relief granted by the Tribunal by interpreting as to what is the pendant and medallion, cannot be interfered in an appeal filed under Section 260-A of the Act. The argument of Mr.T.R.Senthil Kumar, learned Senior Counsel appearing for the Revenue, that the issue goes to the root of the matter is not acceptable because of the subsequent developments that had taken place in the writ petition filed by the assessee, being allowed by this Court and the order of penalty imposed by the Development

Commissioner being set aside. The reason for setting aside the order of penalty imposed on the assessee, is that the assessee has not violated the terms and conditions of the Letter of Approval and that the medallion is also classifiable as a pendant.

11. Thus, for the above reasons, we find no grounds to disturb the findings of the Tribunal. In the result, both the appeals filed by the Revenue are dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To :

1.The Principal Commissioner of Income Tax-I
Coimbatore.

2.The Income Tax Appellate Tribunal
Chennai, 'C' Bench.

3.The Commissioner of Income Tax Appeals-2,Coimbatore.

4.The Assistant commissioner of Income Tax,circle III,
Coimbatore.

T.C.A.Nos.260 & 261 of 2018

A.SK(06/11/2020)