IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM :

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

Tax Case (Appeal) No.470 of 2018

M/s. Harita Seating Systems Limited ..Appellant/Appellant

-vs-

Deputy Commissioner of Income Tax
Corporate Circle 2 (2)
Nungambakkam
Chennai 600 034. ..Respondent/Respondent

Appeal filed under Section 260A of the IT Act, 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 8th December, 2017 in ITA No.1665/Mds/2017 as against the order of the Commissioner of the income tax (Appeals-6, Chennai, dated 27/04/2017, in ITA No.33/CIT(A)-6/2016-17 and against the order of the Deputy Commissioner of In come Tax Corporate circle-2(2), Chennai, dated 29/03/2016 in PA.AAA Ch2492N-Assessment year 2013-14.

For Petitioner : Mr. R. Vijayaraghavan
for M/s.Subbaraya Aiyar
Padma

For Respondent : Mr. Karthik Ranganathan
Standing Counsel.

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.,)

The present Appeal has been filed Under Section260 A of the IT Act 1961 [in short "IT Act"], against the impugned order of the Income Tax Appellate Tribunal, "C" Bench, Chennai dated 08.12.2017, confirming the order of the Commissioner of Income Tax (Appeals)-6, Chennai 600 034, dated 27.04.2017.

2. The facts narrated briefly for the disposal of this appeal are as follows:

2.1. The appellant / assessee is registered at Chennai and engaged in the business of manufacturing of seating systems for automobiles. The assessee has filed its Original Return of Income Tax for the Assessment Year 2013-14 (Financial Year 2012-13) admitting total income of Rs.7,18,79,936/- and subsequently filed its Revised Return of Income for the said Assessment Year admitting an income of Rs.7,16,15,936/-. The said return was processed Under Section 143(1) of the IT Act, and selected for scrutiny and was followed by a Notice under Section 143(2) of the IT Act, dated 02.09.2014. The appellant / assessee had claimed weighted deduction at the rate of 200% amounting to Rs.7,78,74,366/- towards Research and Development expenditure Under Section 35(AB)(2) of the IT Act 1961, and the said deduction pertains to income from Hosur Unit, which carries out Research and Development works.

2.2. The Assessing Officer found that benefit of the Research and Development done by the Hosur Unit is utilised by the other manufacturing Unit of Himachal Pradesh also and computed the taxable income of the Assessee as follows, vide assessment order dated 29.03.2016.

		(Rs.)
I	Income from Business	11,23,48,278/-
II	Income from other sources	13,49,191/-
III	Gross Total Income	11,36,97,469/-
	Less: Deduction U/s. 80G	2,50,000/-
	Total Income	11,34,47,469/-

Assessed Income - Rs.11,34,47,469/-
Tax thereon - Rs.3,40,34,241/-

2.3. The assessee aggrieved by the said assessment order, preferred an appeal before the Commissioner of Income Tax

(Appeals)-6, Chennai 600 034. The CIT (Appeals), vide order dated 27.04.2017, had concurred with the views of the Assessing Officer and held that there is a direct connection and proximity between the Research and Development expenses and profitability of the manufacturing units and while allowing the appeal partly, has allowed the deduction under Section 80IC of the IT Act to an extent of 4,69,504/-.

2.4. The assessee challenging the legality of the said order, preferred a further appeal before the Income Tax Appellate Tribunal (ITAT), at Chennai. The ITAT, vide impugned order date 08.12.2017, on facts found that the appellant/assessee is having its units set up in Pune, Hosur, Bangalore and Himachal Pradesh and all the undertakings are doing the same business as that of manufacturing of seats and Seating Systems and it claimed deduction on the Research and Development expenditure under Section 35(AB2) against the income from the units of Hosur, Pune, Bangalore only. The ITAT also found that the benefits of the Research done by the Hosur unit is availed by all the units of the assessee and consequently, the Research and Development expenditure has to be apportioned and having taken note of the concurrent findings recorded by the Assessing Officer as well as the CIT(A), held that it is not the fit case to interfere with the same and accordingly dismissed the appeal. The Assessee, aggrieved by the dismissal of the appeal by ITAT, has filed the present appeal.

3. The Appeal was admitted by this Court on 03.12.2018 and while admitting, the following substantial questions of law were formulated.

1) "Whether the Tribunal was right in law in holding that the expenses incurred towards Research & Development Centre in Hosur should be allocated and deducted while computing the profits derived from the undertaking at Himachal Pradesh by ignoring the scope of profits derived from the undertaking under Chapter VI-A and the decisions rendered by various Courts in this regard?
2) Whether the Tribunal was right in law in holding that the benefits of research is availed by all the units of the assessee and hence the R & D expenditure has to be apportioned between the 80IC unit and non 80IC unit?
3) Whether the expenses incurred by the R & D unit at Hosur which has nothing to do with operations of the eligible undertaking at Himachal Pradesh can be artificially apportioned?"

4. Mr.VijayaRaghavan, learned counsel appearing for the appellant/assessee has made the following submissions:

4.1. The Assessing Officer had presumed and acted on the basis that the benefit of the Research and Development done by the Hosur Unit is also availed by the unit at Himachal Pradesh, for which there was no tenable and substantial material, except the Assessment Officer’s own presumption.

4.2.The certification given by the Department of Scientific and Industrial Research, New Delhi, which enabled the assessee to claim exemption would also disclose that the benefit of Research and Development done by the Hosur Unit is being availed by the Unit at Himachal Pradesh and the Assessing Officer, CIT (Appeals) as well as ITAT merely went on presumption and acted on conjectures and surmises.

4.3. The learned counsel appearing for the appellant/assessee, in support of his submissions, placed reliance upon the following decisions.

1) (2004) 192 CTR 0165 : (2005) 273 ITR 0152 (Bush Boake Allen (India Ltd., vs. Assistant Commissioner of Income Tax) (Division Bench of High Court of Madras)
2) (2007) 161 Taxman 0047 (Commissioner of Income Tax vs. Brakes India Ltd) (Division Bench of High Court of Madras)
3) (2013) 259 CTR 0253 : (2013) 350 ITR 0366 (Zandu Pharmaceuticals Works Limited vs. Commissioner of Income Tax) (Division Bench of High Court of Bombay).

Thus, the learned counsel appearing for the appellant / assessee pleads for interference by answering the substantial questions of law positively in favour of the appellant.

5. Per contra, the learned Standing Counsel appearing for the Revenue would submit that admittedly all the units of the appellants are manufacturing seats for automation application and also draw the attention of this Court to form 3CL dated 14.08.2015 annexing the typed set of documents filed by the appellant/assessee and would submit that even the said form does not make it clear as to the availment of the benefit of the Research and Development only by Hosur, Pune and Bangalore. It is also not in dispute that the unit at Himachal Pradesh does not have any separate Research and Development for the same and therefore, the presumption is that the benefit of the said Research and Development is also availed by the unit at Himachal Pradesh. It is further submitted by the learned Standing counsel appearing for the Revenue that the assessee ought to exempt the income generated by the unit at Himachal Pradesh, by citing the

reason that the benefit of Research and Development having been availed by the said unit and it is also convincing and logical for the reason that income expenditure has to be apportioned by all the manufacturing units and any deduction is to be only on the net income. It is further submitted by the learned standing Counsel for the Revenue that the findings of the CIT(appeals) and ITAT are concurrent in nature and therefore, there are no substantial questions of law arise for consideration in this appeal and prays for dismissal of the same.

6. This Court has carefully considered the arguments advanced by the learned counsel appearing for the appellant/assessee and the learned counsel appearing for the Revenue.

7. The learned counsel appearing for the appellant has placed reliance upon two decisions rendered by the Division Bench of this Court and the decision rendered by the Division Bench of Bombay High Court.

7.1. In the case of Bush Boake Allen India Ltd., vs. Assistant Commissioner of Income Tax (Division Bench of High Court of Madras)[(2005) 273 ITR 0152], it was observed that a presumption was made by the Assessing Officer that any technology about new flavours and essence will automatically be utilized in Chithoor unit without examining as to whether the Research and development actually carried out at Chennai was of use for the unit at Chithoor, as the assesse has other manufacturing units besides the one at Chithoor and therefore, remitted back the matter to the Income Tax Appellate Tribunal.

7.2 In the case of Commissioner of Income Tax vs. Brakes India Ltd) (Division Bench of High Court of Madras [(2007) 161 Taxman 0047], concurrent findings are recorded that as there being no dispute that separate books of account were maintained and further that the Revenue had not been able to show that there was no connection between R&D unit and Sholinganallur unit and dismissed the appeal filed by the Revenue.

7.3 In the case of Zandu Pharmaceuticals Works Limited vs. Commissioner of Income Tax) (Division Bench of High Court of Bombay) [(2013) 350 ITR 0366], in paragraph 5, a finding was recorded that the head office and each of the units have their own separate R&D departments, including laboratories and also placed reliance upon (2005) 273 ITR 152 and the appeal filed by the assessee was allowed.

8. Insofar as the judgment relied upon by the learned standing counsel appearing for the Revenue in the case of Commissioner of Income Tax v. ECS Ltd., reported in (2010) 194

Taxman 311 (Delhi High Court Division Bench), it is settled position of law that the deduction is to be allowed only on net income for the purpose of assessing tax and not on actual amount.

9. In the considered opinion of this Court, the decisions relied upon by the learned counsel appearing for the appellant / assessee are distinguishable on facts. It is not in dispute that the appellant is having it's registered office at Chennai and manufacturing units at Hosur, Pune, Bangalore and Himachal Pradesh, for manufacture seats and parts of seats for automobile application. A perusal of Form 3CL dated 14.08.2015 appended to the typed set of documents, does not throw any light (or) supportive of the case of the appellant / assessee that the benefits of the research and development done by the Hosur unit having been availed by their manufacturing unit at Himachal Pradesh.

10. In the considered opinion of this Court, in order to draw presumption that Himachal Pradesh unit does not have availed the benefit of the research and development done by the Hosur Unit, no material whatsoever has been placed by the appellant/assessee, before the assessing officer. It is not the case of the assessee that the unit at Himachal Pradesh is having it's own Research and Development Unit.

11.The considered opinion of this Court is that the Assessing Officer as well as CTI (Appeals) and the ITAT, had thoroughly gone into the factual aspects and legal position and rightly arrived at the conclusion as to the plea made by the appellant. In sum and substance, the findings rendered by the authorities are concurrent in nature and therefore, there are no substantial questions of law arise for consideration in this appeal.

12. Therefore, this appeal is dismissed, confirming the impugned order of the Income Tax Appellate Tribunal in I.T.A.No.1665/Mds/2017 dated 08.12.2017. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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TO

1. The Deputy Commissioner of Income Tax
   Corporate Circle 2 (2)
   Nungambakkam
   Chennai 600 034.

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

3.The Commissioner of Income Tax (Appeals-6),
   Chennai-34.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.18580
+1cc to Mr.Karthik Rangahathan, S.R.No.18123

NR(CO)
EU 9.7.2020

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