

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

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

Tax Case Appeal No.726 of 2018
Commissioner of Income Tax,
Circle - 1,
Tirunelveli

... Appellant

Vs.

M/s Vetrivel Minerals
Keeraikaran Thattu
Tisayanvilai.

... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.1933/Mds/2017 dated 08.02.2018 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the Assessment Year 2014-2015. This appeal filed against the order of the Income Tax Appellate Tribunal 'B' Bench Chennai, dated 08/02/2018 in ITA No.1933/Mds/2017 in Assessment Year 2014-2015 against the Commissioner of Income Tax (Appeals) -3, Madurai in ITA no. 245/2016-2017 dated 19/05/2017 in PAN No. AAHFV2400N in Assessment Year 2014-2015 against the Assistant Commissioner of Income Tax Tirunelveli PAN No.AAHFV2400N for the Assessment Year 2014-2015

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
assisted by Ms.V.Pushpa
Junior Standing Counsel

For Respondent : Mr.S.Rajmakesh

WEB COPY
J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This appeal, at the instance of the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai in ITA

No.1933/Chny/2017 dated 08.02.2018 for the Assessment Year 2014-2015.

2. The appeal was admitted on 12.11.2018 to consider the following substantial questions of law:

"Whether the Income Tax Appellate Tribunal is right in law in following that the activity of the assessee of purchasing illuminate and removing dust from it and selling the dust removed illuminate amounts to 'manufacture', when Clause(r) of Section 2 of the special Economic Zones Act, 2005 defines 'manufacture' otherwise and that the assessee is eligible for deduction under Section 10AA of the Income Tax Act, 1961?"

3. We have heard Mr. M.Swaminathan, Senior Standing Counsel assisted by Ms.V.Pushpa, Junior Standing Counsel for the appellant / revenue and Mr.S.Rajmakesh, learned counsel for the respondent.

4. The learned counsel on either side submitted that this Court in the assessee's own case in T.C.A.No.605 of 2018 has decided the above mentioned substantial question of law against the revenue and this appeal is covered by the earlier decision.

5. For better appreciation, the operative portion of the Judgment is stated herein below.

'2. The Tax Case Appeal was admitted on 24.08.2018 on the following Substantial Questions of Law.

"(a) Whether the Tribunal was right in holding that the assessee is eligible for deduction U/s.10AA of the Income-tax Act 1961, even though the assessee is not carrying on any manufacturing at its SEZ Unit?

(b) Whether the Tribunal was right in holding that the assessee is carrying on manufacturing activity even though a new product having a distinctive name, character or use was not brought into existence at its SEZ Unit by the assessee as per Special Economic Zone Act 2005?"

3. We have heard Mrs.Premalatha, learned standing counsel for the appellant/revenue and Mr.S.Raj Makesh, learned counsel appearing for the respondent / assessee.

4. The assessee filed their return of income for the Assessment Year under consideration 2013-14 on 27.09.2013, admitting total income of Rs.3,16,61,350/-. The assessment was selected for scrutiny by issuance of

notice under Section 143[2] dated 02.09.2014 and the Assessing Officer rejected the claim of the assessee, who claimed deduction under Section 10AA of the Act, on the ground that the raw material and the finished product are one and the same and there was no manufacturing activity having taken place in the SEZ unit of the assessee.

5. The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-III, Madurai, (the CIT(A), for brevity). The appeal was allowed by an order dated 07.12.2016, alleging that the processes carried out by the assessee in their SEZ unit, results in a new product having a different name, character or use, as per the definition of "manufacture", as defined under Section 2(r) of the Special Economic Zone Act, 2005 [the 'SEZ Act', for brevity].

6. The revenue filed an appeal before the tribunal and by the impugned order, the appeal was dismissed.

7. After elaborately hearing the learned counsels for the parties, we find that the entire issue involved in the instant case is fully factual and in our considered view, no question of Law much less any Substantial Question of Law, arises for consideration. We support such conclusion with the following reasons.

8. The Assessing Officer denied the benefit of the deduction claimed by the assessee on the grounds that what was imported by the assessee and what was exported are the same product and therefore, there was no manufacturing activity done by the assessee to be eligible to claim deduction. In fact, an Inspector from the department had visited the factory to acquaint himself with the process adopted by the assessee in their SEZ Unit. This fact has been recorded by the Assessing Officer in the order of assessment dated 30.03.2016. But, the Assessing Officer, chose to refer to the 'Gate Pass' issued by the Government wherein the description of the goods, is shown as 'Tailings rich in illemnite'. Further the Assessing Officer opined that a minor activity of sieving to separate TCA No.605 of 2018 dust particles only is carried out in the SEZ units and hence, it does not amount to manufacturing.

9. Before the CIT(A), the assessee had explained in detail about the process adopted by them. A certificate has been given by the Assistant Development Officer dated 28.03.2013, certifying that the assessee's unit has commenced production on 29.02.2012. Further, the

assessee has stated that the export invoice was submitted to the Assessing Officer during the assessment procedure. However, the same was ignored and was not taken into consideration.

10. The CIT(A) after considering the factual position accepted the submission of the assessee that the semi finished material purchased by the assessee is not marketable and usable in the industry, as what is purchased by the assessee includes silicon, sand and waste, which cannot be marketed as such, unless the waste materials are removed. The flow chart, which was produced by the assessee before the Assessing Officer, was referred to CIT(A) and he came to the conclusion that the Assessing Officer was himself misled by the nomenclature used in the Gate Pass. After considering the factual materials, the CIT(A) concluded that the process done by the assessee would qualify as 'manufacture', under the SEZ Act.

11. The Revenue carried the matter by way of appeal to the tribunal and the tribunal once again re-appreciated the factual position and found that there is a process of 'manufacture' as defined under the SEZ Act, which takes place in the SEZ unit and also pointed out that the Assessing Officer himself has accepted that the assessee's unit, processed the raw materials by removing 10 to 20% impurities. Cost comparison of the semi finished product with that of the raw material was also referred to and it was also pointed out that the Assessing Officer could not establish that the assessee has suppressed the purchase cost of semi-finished goods in order to claim higher deduction under Section 10AA of the Act. Furthermore, the certificate issued by the Assistant Development Officer was accepted on the ground that the revenue could not prove the same to be not genuine. Therefore, the tribunal sustained the factual finding recorded by the CIT(A). 12. Thus, in our considered view, the entire factual matrix has not only been analyzed by the CIT(A), but, also by the tribunal. Therefore, we are convinced to observe that no question of Law much less any Substantial Question of Law arises for consideration in this appeal. Accordingly the Tax Case Appeal fails and the same is dismissed. No Costs.'

Thus following the above mentioned decision, the present Tax Case Appeal is dismissed and the Substantial Question of Law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

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

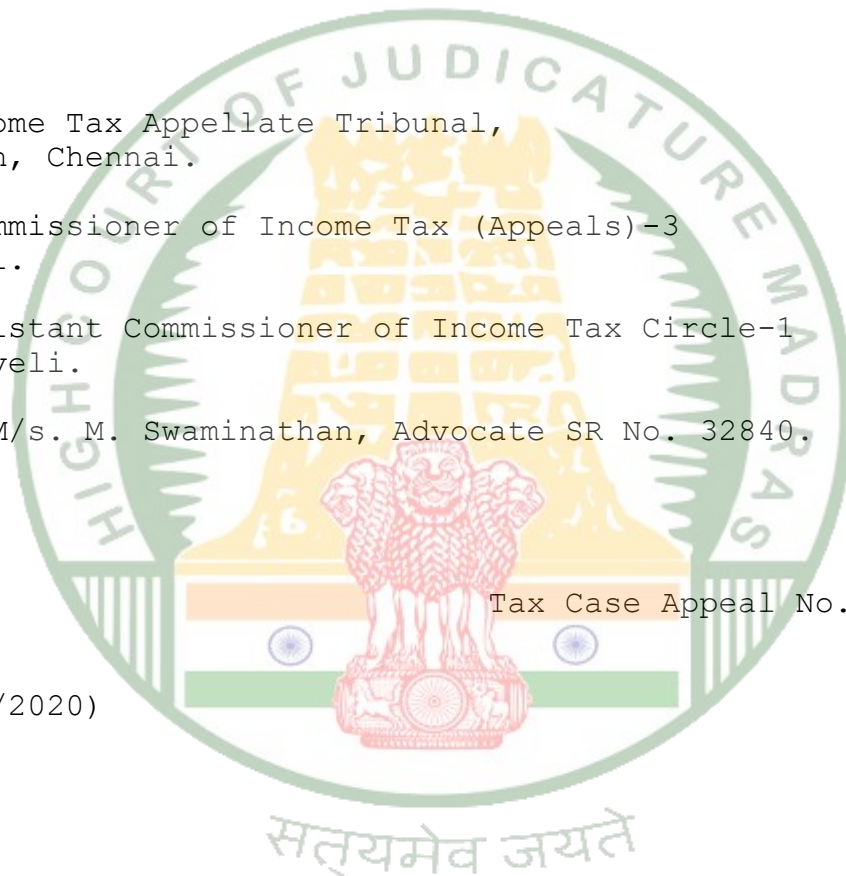
2. The Commissioner of Income Tax (Appeals)-3
Madurai.

3.The Assistant Commissioner of Income Tax Circle-1
Tirunelveli.

+1 CC to M/s. M. Swaminathan, Advocate SR No. 32840.

Tax Case Appeal No.726 of 2018

RR (CO)
NRA (08/12/2020)



WEB COPY