

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

CORAM :

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

T.C.A.No.872 of 2017

Commissioner of Income Tax,
Chennai

...Appellant

-Vs-

M/s.Sankhya Technologies Pvt Ltd.
NO.13/2 III Floor, Jayalakshmipuram,
1st street, Nungambakkam, Chennai 34

...Respondent

Prayer : Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 23.9.2016 in I.T.A.No.589/Mds/2015 against the order of the Commissioner of Income Tax (Appeals-15) Chennai dated 12.01.2015 in I.T.A. No. (049/13-14/A-15 for assessment year 2003-2004 passed under Section 143(3) and 250 of I.T. Act 1961 against the order dated 30.10.2006 in PAN SA.244/AADCS4838E on the file of the Income Tax officer(OSD) Company Circle VI(1) Chennai 34.

For Appellant:Mr.J.Narayanaswamy, Sr.Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

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

2. This Appeal has been filed by the Revenue against the order of the learned Tribunal dated 23.09.2016 for Assessment Year 2003-04, by which the learned Tribunal decided against the Revenue that the Assessee was entitled to include the interest on bank deposits for the purpose of claiming deduction / exemption under Section 10A of the Act.

3. The substantial question of law raised in the present appeal is given hereunder.

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee company is eligible for setoff of business

loss u/s 10A against the other income like interest income etc., by applying the provision of section 70, when the assessee itself had returned business loss u/s. 10A?"

4. The relevant findings of the learned Tribunal are quoted below for ready reference.

7. We have heard the rival submissions, perused the material on record and judicial decisions. The crux of the issue being denial of set off of income from other sources against business loss u/s 10A unit. The Assessing Officer in the re-assessment proceedings has segregated the business loss separately and allowed exemption u/s 10A and made addition of interest < 23,60,578/- under income from other sources. The CIT(A) upheld the action of the Assessing Officer relying on the judgment of Karnataka High Court in Yokogawa India. Ltd. (supra) and came to a conclusion that there should be nexus between the income earned in respect of the industrial undertaking.

8. The ld. DR explained that it is in the nature of exempted business loss. As against the above, the Id. AR submitted that under the provisions of sec. 70(1), set off of loss for one source against income from another source under the same head of income is allowed. By applying this provision the assessee-company has adjusted and set off the other income including the interest income with the business loss u/s 10A of the Act and filed the return of income. Further there was an amendment to this provision where deduction u/s 10A has to be treated as a deduction from total income, therefore, the assessee by applying the provision has claimed the set off against the business loss. The decisions relied by the Id. AR are in support of his arguments wherein it was held that the loss of 10B unit is available for set off u/s 70. So, same principle applies to the provisions of 10A. We find that a similar issue was considered by the jurisdictional High Court in the case of CIT vs M/s Lason India Pvt. Ltd. in Tax case (Appeal) NO.1529 of 2007 dated 29.10.2013 wherein it was held as under:

"6. In the light of the circular issued by the Government of India, Central Board of Direct Taxes, we do not find the contention of the Revenue remains any

longer res integra for this court to consider the same. In this decision rendered in T.C(A) Nos. 72 & 73 of 2009, dated 22.10.2013, Commissioner of Income tax vs Mis Pentasoft Technologies Ltd this Court has also considered the effect of the circular as well as the decision of the Bombay High Court in the case of Commissioner of Income-tax vs Galaxy Surfactants Ltd, reported in 343 ITR 108 and Hindustan Unilever Ltd vs Deputy Commissioner of Income-tax reported in [2010] 325 ITR 102[Bom] as regards the set off of loss suffered by the assessee in ineligible unit as against the profit of eligible unit in favour of the assessee. In the light of the Circular above, referred to and the decision of this Court, we hold that the assessee is entitled to set off of the losses against the income of the eligible unit, so long as the loss was not liable to be excluded in the category even under 10B of the Income Tax Act."

9. Therefore, considering the apparent facts, material on record and judicial decisions and provisions of sec. 70 of the Act, we are of the opinion that the assessee company is eligible for set off of business loss against other income including interest under the same head. And the Assessing Officer is directed to allow set off of the other income with business loss determined u/s 10A of the Act.

10. In the result, appeal of the assessee is allowed. Order pronounced on Friday, 23'd September, 2016, at Chennai.

5. It has been brought to the notice of this Court that there is a judgment of the Full Bench of the Karnataka High Court, to which one of us (Dr.Vineet Kothari, J.) was a party, in which the Full Bench has held that the interest on bank deposits is also eligible to be included in the profits of 100% Export Oriented Units for the purpose of claiming deduction under Section 10A / 10B of the Income Tax Act. The relevant portion of the judgment of the Full Bench of the Karnataka High Court is quoted below.

"35. The Scheme of Deductions under Chapter VIA in Sections 80-HH, 80-HHC, 80-IB, etc from the 'Gross

Total Income of the Undertaking', which may arise from different specified activities in these provisions and other incomes may exclude interest income from the ambit of Deductions under these provisions, but exemption under Section 10-A and 10-B of the Act encompasses the entire income derived from the business of export of such eligible Undertakings including interest income derived from the temporary parking of funds by such Undertakings in Banks or even Staff loans. The dedicated nature of business or their special geographical locations in STPI or SEZs. etc. makes them a special category of assessee entitled to the incentive in the form of 100% Deduction under Section 10-A or 10-B of the Act, rather than it being a special character of income entitled to Deduction from Gross Total Income under Chapter VIA under Section 80-HH, etc. The computation of income entitled to exemption under Section 10-A or 10-B of the Act is done at the prior stage of computation of Income from Profits and Gains of Business as per Sections 28 to 44 under Part-D of Chapter IV before 'Gross Total Income' as defined under Section 80-B (5) is computed and after which the consideration of various Deductions under Chapter VI-A in Section 80HH etc. comes into picture. Therefore analogy of Chapter VI Deductions cannot be telescoped or imported in Section 10-A or 10-B of the Act. The words 'derived by an Undertaking' in Section 10-A or 10-B are different from 'derived from' employed in Section 80-HH etc. Therefore all Profits and Gains of the Undertaking including the incidental income by way of interest on Bank Deposits or Staff loans would be entitled to 100% exemption or deduction under Section 10-A and 10-B of the Act. Such interest income arises in the ordinary course of export business of the Undertaking even though not as a direct result of export but from the Bank Deposits etc., and is therefore eligible for 100% deduction.

36. We have to take a purposive interpretation of the Scheme of the Act for the exemption under Section 10-A/10-B of the Act and for the object of granting such incentive to the special class of assessee selected by the Parliament, the play-in-the-joints is allowed to the Legislature and the liberal interpretation of the exemption provisions to make a purposive interpretation, was also propounded by Hon'ble Supreme Court in the following cases:-

"I] In *Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay*, [(1992) 3 SCC 78], the Hon'ble Supreme Court held that:- "5.Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it. But that turned out to be the, unintended, consequence of construing the clause literally, as was done by the High Court for which it cannot be blamed, as the provision is susceptible of such construction if the purpose behind its enactment, the objective it sought to achieve and the mischief it intended to control is lost sight of. One way of reading it is that the clause excludes any undertaking formed by transfer to it of any building, plant or machinery used previously in any other business. No objection could have been taken to such reading but when the result of reading in such plain and simple manner is analysed then it appears that literal construction would not be proper. ..."

II] In *R.K. Garg v. Union of India*, [(1981) 4 SCC 675] = [1982. SCC (Tax) 30 p.690], the Hon'ble Apex Court has held as under:- "8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give

judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* [351 US 457 : 1 L Ed 2d 1485 (1957)] where Frankfurter, J., said in his inimitable style: "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability." The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

37. On the above legal position discussed by us, we are of the opinion that the Respondent assessee was

entitled to 100% exemption or deduction under Section 10-A of the Act in respect of the interest income earned by it on the deposits made by it with the Banks in the ordinary course of its business and also interest earned by it from the staff loans and such interest income would not be taxable as 'Income from other Sources' under Section 56 of the Act. The incidental activity of parking of Surplus Funds with the Banks or advancing of staff loans by such special category of assessee covered under Section 10-A or 10-B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the Undertaking engaged in the export of Articles as envisaged under Section 10-A or Section 10-B of the Act and cannot be taxed separately under Section 56 of the Act.

38. We therefore affirm and agree with the view expressed by the first Division Bench of this Court in the case of M/s. Motorola India Electronics (P) Ltd.(supra) and we do not agree with the view taken by the subsequent Division Bench on 10/04/2014 in the present case.

39. Both the questions thus framed above are answered in favour of the Respondent Assessee and against the Revenue in the terms indicated above and the matter is sent back to the Division Bench for deciding this Appeal in accordance with the aforesaid opinion."

6. Having heard the learned counsel for the Appellant Revenue, we are of the considered opinion that the controversy involved in the present appeal filed by the Revenue is squarely covered by the decision of the Full Bench of the Karnataka High Court cited supra, to which we respectfully agree and the substantial question of law raised in this appeal is answered in favour of the Assessee and against the Revenue.

7. In view of the aforesaid, the appeal is dismissed and answering the question of law in favour of the respondent Assessee and against the appellant Revenue. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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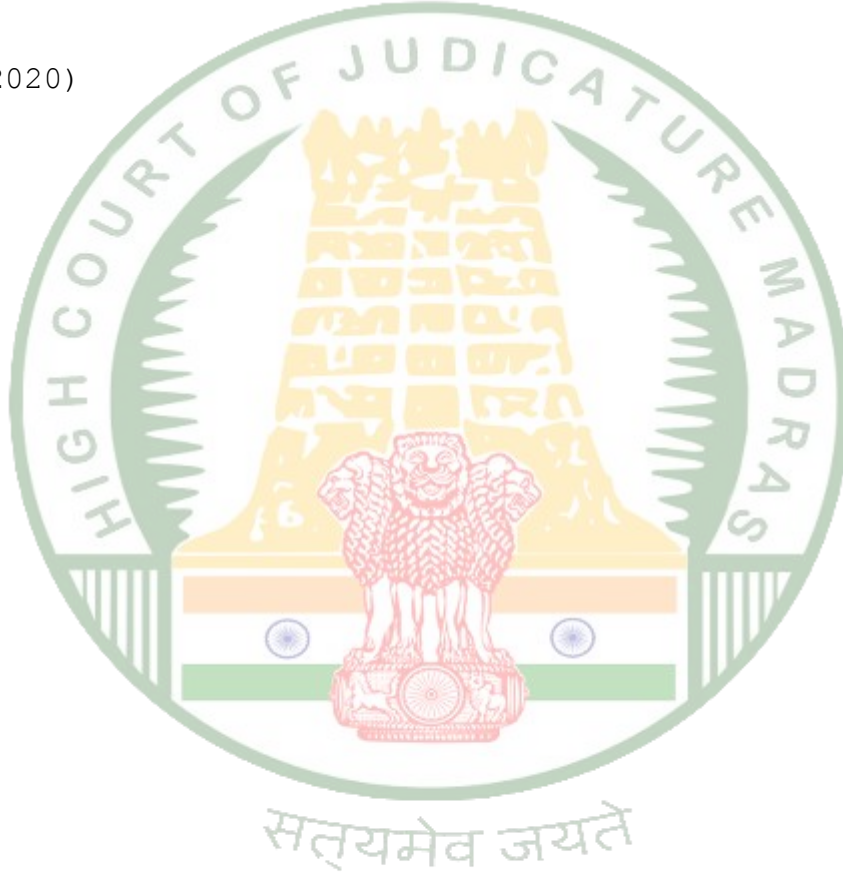
1.Income Tax Appellate Tribunal, Madras 'C' Bench.

2.The Commissioner of Income Tax (Appeals)15
Chennai

3.The Income Tax Officer(OSD)
Company Circle VI(1) Chennai 34.

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RGN(CO)
SP(08/10/2020)



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