



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A. No. 1193 of 2009

The Commissioner of Income Tax-I
Coimbatore.

..Appellant

Versus

M/s. Elgi Ultra Industries Ltd.
India House, Tiruchy Road
Coimbatore-18
PAN No. AAA CE 4566 G

..Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai dated 12.06.2009 passed in I.T.A.No.1220/Mds/2008 for the Assessment Year 2005-06. Appeal against the order dated 15.04.2008 made in Appeal No.211/07-08 on the file of the Commissioner of Income Tax (Appeals)-1, Coimbatore. Appeal against the order dated 26.12.2007 made in PAN/GIR No.AAA CE 4566G on the file of the Assistant Commissioner of Income Tax company Circle -1(1) Coimbatore - 18, for the Assessment year 2005-2006.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
Mrs. K.G.Usha Rani
Junior Standing Counsel

For Respondent : Mr. N.V.Balaji
For M/s. C.Manishankar

JUDGMENT

(Judgment was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the materials placed before this court.

2.This tax case appeal has been filed by the Revenue, calling in question the order dated 12.06.2009 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in I.T.A.



No.1220/Mds/2008 relating to the Assessment Year 2005-06.

3. On 30.11.2009, the aforesaid appeal was admitted on the following substantial questions of law:-

WEB COPY

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is eligible for relief under section 80IA of the Act, even though the assessee was not engaged in the process of manufacture, but only assembling the parts procured from others?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing the bad debts written off in the books of accounts, even though the conditions laid down under section 36(1)(vii) read with section 36(2) of the Act, were not satisfied by the assessee?

4. The first substantial question of law is covered by the earlier order of this Court in the assessee's own case in Commissioner of Income-tax, Coimbatore -vs- Elgi Ultra Industries Ltd. [(2012) 25 taxmann.com 561 (Mad.)], wherein, it was held as follows:

"8. A perusal of the orders of the assessment as well as the order of the Appellate Authority show that the assessee procured raw materials and components. The dyes of the assessee were handed over to the job contractors to make use of the same in the manufacture of grinder parts. The order of the authorities below show that the assessee exercised supervision and control in the manufacturing of the parts done by the job workers on the materials supplied by the assessee in according to the specification in the dyes supplied by the assessee. They were subjected to quality control too. Thus even though the assessee had not employed its own employees, yet, the fact is that at every stage the assessee had extracted control over the job work as though they were employees of the assessee. Given the fact that the dyes and the materials were given by the assessee to the job workers, who had merely bestowed their labours, we have no hesitation in accepting the case of the assessee that it qualify for relief under Section 80IA.

9. In the decision reported in 216 ITR 566 - C.I.T v. V.O. RAMALINGAM, this Court considered the meaning of manufacture or processing of goods under the Wealth Tax Act. This Court pointed out that,

"..... There should be no misapprehension that "engaged in manufacturing"



WEB COPY

postulates the assessee's direct involvement in the manufacture and that it may not be necessary that the assessee himself should be personally engaged, but it is enough that he employs his own labourers. It is suggested that the processing leading to the manufacture should be in some sort of permanent establishment with a number of employees engaged in regular work".

10. This Court further pointed out to the decision reported in 59 ITR 699 - CIT v. MANMOHAN DAS as well as [1957] SCR 157 - DHARANGADHARA CHEMICAL WORKS LTD v. STATE OF SAURASHTRA and held that,

"We thus have no manner of doubt that in deciding whether the assessee had engaged himself through his employees in the manufacture or processing of goods, it will be necessary to see whether labourers engaged were under the control of an independent contractor or were controlled by an agent, whose agency distinguished him from that of a servant or employee, and how far the assessee exercised control by engaging such labourers for work, paying wages or remuneration and determining their conditions of service. "

11. Thus this Court held that the question as to whether the assessee is engaged in the manufacturing process or not, has to be seen in the context of the control exercised by the assessee. Going by the facts therein, indicating the supervision and control, this Court held that bleaching of grey yarn and colouring done through job worker is covered by Section 5(1) (xxxii) of the Wealth Tax Act.

12. As far as the decision of the Apex Court reported in 225 ITR 814 - CHILLIES EXPORTS HOUSE LIMITED v. COMMISSIONER OF INCOME TAX is concerned, the Apex Court considered the issue as to whether the assessee was an industrial company as defined under the Finance Act and hence, to be taxed at 55%. There the assessee got the chillies fumigated by a third party by paying charges therefor under a contract. The Apex Court pointed out that the question as to whether the assessee was carrying on business of processing of goods would depend upon the consideration of all relevant materials available in the case. The question that fumigation was done by another party is immaterial or irrelevant for the purpose of considering whether the assessee is engaged in the manufacturing activity. The question is whether the activity including the one relating to fumigation given to another party to make the goods to be



WEB COPY

exported as a marketable commodity, amounted to processing of goods, has to be considered on the basis of the facts available. Thus, the Apex Court pointed out that question as to whether the assessee was carrying on process of goods has to be looked at by taking into consideration the different activities carried on by the assessee, which resulted in making the goods fit for export and how far the cumulative effect of those activities will amount to the processing of goods. Thus, the Apex Court set aside the order and remitted the matters to the High Court for de novo consideration.

13. A reading of the said judgment shows that the reasoning is similar to what is considered in the decision reported in 216 ITR 566 - COMMISSIONER OF WEALTH TAX v. RAMALINGAM. Thus, the sum and substance of the law declared by this Court is that the fact that the assessee himself is not personally engaged in the manufacture, would not disentitle the assessee from claiming the relief as one engaged in manufacturing activity, for, so long as the assessee exercises control in the work entrusted to job workers, the assessee would be entitled to the relief under Section 80IA of the Act. Being a deduction provision, taking note of the present day outsourcing of various activities, we need to give a meaningful expression to "assessee engaged in the manufacturing process", to hold that so long as the effective involvement of the assessee is there in the form of quality control or supply of material and dyes for the manufacture of parts of the grinders or machinery, even in the case of assembling done through job work, the assessee would be entitled to have the benefit under Section 80IA of the Act.

14. In the circumstances, guided by the decision reported in 216 ITR 566 - COMMISSIONER OF WEALTH TAX v. RAMALINGAM, we hereby rejecting the Revenue's appeal, thereby, confirming the order of the Tribunal. The above Tax Case (Appeals) are dismissed. No costs."

Following the aforesaid decision, the first substantial question of law is answered in favour of the assessee and against the Revenue.

5.As regards the second substantial question of law, the provisions of section 36(1)(vii) of the Income Tax Act, 1961 provide for allowance of an amount representing bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year.



WEB COPY

6. In the present case, for the previous assessment year 2000-01, the assessee had taken over debts of Rs.25,68,81,743 for a sum of Rs.22,10,00,000/- relating to several parties and they have accounted the interest received on these loans amounting to Rs.1,79,40,872/-, Rs.89,70,436/- and Rs.89,70,436/- for Assessment Years 2002-03, 2003-04 and 2004-05 respectively. The opening balance of amount outstanding was Rs.24,87,53,073/- as on 01.04.2002, Rs.23,74,73,791/- as on 01.04.2003, and Rs.22,29,75,358/- as on 01.04.2004. Out of these amounts, a sum of Rs.1,00,89,071/- was written off in the books as bad debts during the previous year relevant to the assessment year 2005-06.

7. The claim for deduction on account of writing off of bad debts, was disallowed by the assessing officer on the ground that the debts have been taken over from the sister concerns voluntarily only as a measure of support to it and knowing fully well that the same was irrecoverable and hence, the same was liable to be denied. In appeal, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee. The said order was also confirmed by the Tribunal taking note of the position that the Memorandum and Articles of Association permitted the assessee to carry on the business of money lending and the transactions in question have been held to be in the realm of business activity.

8. When there is no dispute raised on the aforesaid factual position, this court finds no reason to differ with the view taken by the Tribunal. In view of the same, the second substantial question of law is also answered in favour of the assessee and against the Revenue.

9. It is also to be noted that by order dated 09.01.2019 passed by this court in TCA Nos.1270 and 1271 of 2009, pertaining to the very same assessee for the assessment years 2002-03 and 2003-04, the substantial questions of law were decided in favour of the assessee and the appeals filed by the Revenue were dismissed.

10. Therefore, this tax case appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Maya



To

1. The Income Tax Appellate Tribunal
Chennai 'D' Bench.

2. The Commissioner of Income Tax (Appeal)-I
Coimbatore.

3. The Assistant Commissioner of Income Tax
Company Circle 1(1), Coimbatore - 18.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.65087

+1cc to Mr.M.Saminathan, Advocate, S.R.No.65366

T.C.A. No. 1193 of 2009

RSV(CO)
RGA(30/12/2021)