

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal No.1253 of 2009 and
M.P. No.1 of 2009

M/s. Nuovafil Infotech Pvt. Ltd.,
177, Devandra Street,
Vanniyampayam,
Vedapatti PO,
Coimbatore - 641 007. ...Appellant/Appellant

v.

The Income Tax Officer,
Company Ward-I,
Coimbatore. ...Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, dated 10.09.2008 passed in I.T.A.No.747/Mds/2007 against the order of Commissioner of Income Tax (Appeals)I, Coimbatore in Appeal No.165/06-07 dated 05.01.2007 against the order of Income Tax Officer, Company ward-I Coimbatore in PAN/GIR NO AABCN1240P dated 25.06.2006 Assessment year 2004-2005.

For Appellant : Ms. Sriniranjani Srinivasan
for Mr. G. Baskar
Mr.N.Muthukumar

For Respondent : Mr.T.R. Senthil Kumar
Standing Counsel
for Ms. K.G. UJsharani,
Standing Counsel

J U D G M E N T

(Delivered by M. DURAISWAMY, J)

The assessee has filed the above Tax Case Appeal challenging the order dated 10.09.2008 passed in I.T.A.No.747/Mds/2007 in respect of the Assessment Year 2004-05 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai.

2.1 According to the appellant, it is the 100% export oriented unit and for the assessment year 2004-05, the assessee claimed exemption under section 10B of the Income Tax Act. The total deduction claimed was Rs.16,84,825/- and the total export turnover was Rs.4.25,32,628/-. The Assessing Officer restricted the deduction to Rs.9,25,865/- on the ground that out of the total export turnover of Rs.4.25,32,628/-, the foreign exchange realized was only Rs.2,10,35,760/- by refusing to take into consideration of the payment of Rs.2,14,96,917/-, which was adjusted towards the imports of certain raw materials made by the assessee for the manufacture of the very same goods which were exported.

2.2 According to the appellant-assessee, the word 'sale proceeds' occurring in section 10B(3) cannot be construed to be only as the total value of the goods exported but would need to be interpreted as net sale proceeds when the competent authority, viz., the Reserve Bank of India, permits such realization of foreign exchange of net sale value.

2.3 The appellant contended that the statutory authority failed to take into consideration the fact that when the competent authority under section 10B(3), viz., the Reserve Bank of India, permits realization of net sale value as against the realization of the total value of the goods exported as compliance with its provision and other related statutory provisions dealing with the foreign exchange, the Income Tax authority could not be allowed to interpret the word 'sale proceeds' occurring in section 10B(3) as otherwise.

3. This Court admitted the above Tax Case Appeal on the following Substantial Question of Law:

" Would not the insistence of bringing into India the entire sale value of the good exported, thereafter remitting the value of the goods imported through the same person, an empty formality and opposed to the decision of the Supreme Court of India reported in 223 ITR 271 in the case of J.B. Boda & Co.Private Ltd. ?"

4.. We have heard Ms. Sriniranjani Srinivasan, learned counsel for the appellant/assessee and Mr. T.R. Senthil Kumar, learned Standing Counsel for the respondent/Revenue.

5.1 The learned counsel for the appellant submitted that the order passed by the authorities rejecting the case of the appellant is against the decision of the Hon'ble Supreme Court reported in (1997) 223 ITR 0271 in the case of J.B. Boda & Co. Pvt. Ltd. vs. Central Board of Direct Taxes. In the said judgment, the Hon'ble Apex Court held as follows:-

" 8. The facts brought out in this case, are clear as to how the remittance to the foreign reinsurance company is made through the Reserve Bank of India in conformity with the agreement between the appellant and the foreign reinsurer, and that the remittance that the amount due to the foreign reinsureres as also the brokerage due to the appellant and the balance due to the foreign reinsurer is remitted (and expressed so) in dollars. It is common ground that the entire transaction effected through the media of the Reserve Bank of India is expressed in foreign exchange and in effect the retention of the fee due to the appellant is dollars for the services rendered. This, according to us, is receipt of income in convertible foreign exchange. It seems to us that a "two way traffic" is unnecessary. To insist on a formal remittance to the foreign reinsures first and thereafter to receive the commission from the foreign reinsurer, will be an empty formality and a meaningless ritual, on the facts of this case. On a perusal of the nature of the transaction and in particular the statement of remittance filed in the Reserve Bank of India regarding the transaction filed in the Reserve Bank of India regarding the transaction, we are unable to uphold the view of the respondent that the income under the agreement is generated in India or that the amount is one not received in convertible foreign exchange. We are of the view that the income is received in India in convertible foreign exchange, in a lawful and permissible manner through the premier institution concerned with the subject-matter -- the Reserve Bank of India. In this view, we hold that the proceedings of the Central Board of Direct Taxes dated 11.3.1986, declining to approve the agreements of the appellant with M/s Sedgwick offshore Resources Ltd. London for the purposes of section 80-0 of the Income-tax Act, are improper and illegal. We declare so. we direct the respondent to process the agreements in the light of the principles laid down by us herein above. The appeal is allowed. There shall be no order as to costs."

Further, the Hon'ble Supreme Court held that an assessee acting as agent of foreign reinsurer, collecting premia from the ceding Insurance Company in India and remitting the same to the foreign insurer in foreign exchange, with the permission of the RBI, after retaining the brokerage in foreign exchange, the brokerage income retained by assessee is receipt of income in convertible foreign exchange qualifying for deduction under section 80-0 of the Income Tax Act.

5.2 The learned counsel for the appellant in support of his contention also relied upon a judgement reported in (2012) 21 taxmann.com 314 in the case of Commissioner of Income Tax, Bareilly v. Henna Zebraat wherein following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in (1997) 223 ITR 0271 (cited supra), the Allahabad High Court held as follows:-

"7. It is not denied and rather admitted that the assessee was importing gold bars, without incurring any expenses on foreign exchange, which was imported on credit. The gold bars brought into the country were got converted into jewellery, and exported thereafter against such credit. It was not a two way transaction. The assessee purchased gold bars from Dubai, on credit and exported it, after they were converted into as jewellery. The amount due and payable in US dollars to the Dubai parties in respect of import of gold bars from them, was deducted from the gross export of sale proceeds, to arrive at the balance amount receivable by the assessee from the Dubai parties.

8. We may quote here the principle of law, for our benefit, laid down by the Supreme Court in J.B. Boda (P.) Ltds case (supra) under section 800 of the Act, which in our opinion is equally applicable to section 10A of the Act as follows:-

" The facts brought out in this case are clear as to how the remittance to the foreign reinsurance company is made through the Reserve Bank of India in conformity with the agreement between the appellant and the foreign reinsurers, and that the remittance statement filed along with annexure "A" which evidences that the amount due to the foreign reinsurers as also the brokerage due to the appellant and the balance due to the foreign reinsurers is remitted (and expressed so) in dollars. It is common ground that the entire transaction effected through the medium of the Reserve Bank of India is expressed in foreign exchange and in effect the retention of the fee due to the appellant is in dollars for the services rendered. This, according to us, is receipt of income in convertible foreign exchange. It seems to us that a "two-way traffic" is unnecessary. To insist on a formal remittance to the foreign reinsurers first and thereafter to receive the commission from the foreign reinsurer, will be an empty formality and a meaningless ritual, on

the facts of this case. On a perusal of the nature of the transaction and in particular the statement of remittance filed in the Reserve Bank of India regarding the transaction, we are unable to uphold the view of the respondent that the income under the agreement is generated in India or that the amount is one not received in convertible foreign exchange. We are of the view that the income is received in India in convertible foreign exchange, in a lawful and permissible manner through the premier institution concerned with the subject-matter the Reserve Bank of India. In this view, we hold that the proceedings of the Central Board of Direct Taxes dated 11-3-1986, declining to approve the agreements of the appellant with Sedgwick Offshore Resources Ltd., London, for the purposes of section 800 of the Income-tax Act, are improper and illegal. We declare so. We direct the respondent to process the agreements in the light of the principles laid down by us hereinabove. The appeal is allowed. There shall be no order as to costs"

9.. The Tribunal did not commit any error in finding that the principle of laid down in J.B. Boda & Co. (P.) Ltds case (supra) will be applicable, in the deduction of profits and gains from the business under section 10A of the Act. We further find that the words sale proceeds in section 10A would, in the context also mean, net proceeds, if the goods were purchased from foreign buyers on credit. The Explanations 1 and 2 to sub-section (3) is not attracted in the present case.

10. The distinction sought to be drawn by Sri. A.N. Mahajan on the basis of perks in the case of section 800 and Section 10A of the Act is not relevant as principle for allowing deductions in both the sections remain the same.

11. In view of the above discussion, we find that the question of law raised by the appellant-department are covered by decision of the Supreme Court in J.B. Boda & Co. (P.) Ltd. (supra). All the Income-tax Appeals are dismissed."

6 . The learned counsel for the respondent submitted that the appellant did not obtain any prior approval from the RBI as contemplated under Explanations 1 and 2 to section 10B(3) of the Income Tax Act and that they have not brought the entire sale proceeds, which is violative of section 10B of the Act.

7. It is pertinent to note that as per Explanations 1 and 2 to section 10B(3) of the Income Tax Act the sale proceeds shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the said purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

8. The learned counsel for the appellant further submitted that under section 155 (11A), the prior approval of the Reserve Bank of India is not required. The amended provision of Section 155(11A) came into effect from 13.07.2006.

9. When the subject matter of the appeal is pertaining to the assessment year 2004-05, the provisions of the amended section, which came into effect on 13.07.2006, has no application for the present case. Therefore, the appellant cannot take shelter under the amended provision of Section 155 (11A).

10. It is also pertinent to note that the appellant submitted their application seeking approval from the RBI only in the year 2007. The appellant had also enclosed various correspondence between them and the RBI with regard to the approval.

11. Since the appellant had sought for the approval from the RBI only in the year 2007, the said correspondence shall not be helpful to the appellant in any manner whatsoever for the reason that the subject matter of the appeal is pertaining to the assessment year 2004-05. Even the Hon'ble Supreme Court in the judgment reported in (1997) 223 ITR 0271 (cited supra) held that the assessee should get prior permission from the RBI.

12. In the Judgment reported in (2012) 21 taxmann.com 314 (cited supra), the Allahabad High Court held that Explanations 1 and 2 to section 10B(3) of the Act is not attracted to the subject matter of the appeals therein. The Hon'ble Supreme Court in the Judgment reported in 1997) 223 ITR 0271 (cited supra) clearly held that prior approval is mandatory. Hence, Explanations 1 and 2 to section 10B(3) are applicable to the case on hand.

13. The materials available on record would clearly establish that the appellant had not obtained prior approval from the RBI as contemplated under Explanations 1 and 2 to section 10B(3) of the Act. That apart, Form 56G would reflect that the Foreign Inward Remittances with regard to the sale proceeds have not been brought in foreign currency during the previous year and within six months period. As per Section 10B of the Act, the entire sale proceeds should have been brought into India in convertible foreign exchange, within the prescribed period. Out of the total export turnover of

Rs.4,25,32,628/-, the foreign exchange realized within the prescribed period was Rs.2,10,35,760/- The appellant contended that a sum of Rs.2,14,96,917/- was adjusted against import of raw material.

14. Since the appellant-assessee did not bring the entire sale proceeds in convertible foreign exchange as per the provisions, the authorities disallowed the said deduction. The obligation on the part of the assessee to avail the beneficial section is that the entire sale proceeds ought to have been received in convertible foreign exchange as per the above section. Alternatively, the assessee should have opened a bank account as per the Explanation 2 of the above section.

15. Considering the facts and circumstances of the case, the Assessing Officer restricted the deduction to Rs.9,25,865/-. The appeal preferred by the appellant before the Commissioner of Income Tax (Appeals)-I, Coimbatore was also dismissed by the Commissioner. The Income Tax Appellate Tribunal, 'A' Bench, Chennai, had also confirmed the order passed by the authorities and dismissed the appeal. The reasoning given by the authorities restricting the deduction of Rs.9,25,865/- is just and proper.

16. For the reasons stated above, we do not find any ground much less any substantial question of law to interfere with the order passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai. Hence, the Tax Case Appeal preferred by the appellant is liable to be dismissed. Accordingly, the Tax Case Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

By

To

1. The Income Tax Officer,
Company Ward-I,
Coimbatore.

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

3. The Commissioner of Income Tax (Appeals) I
Coimbatore.

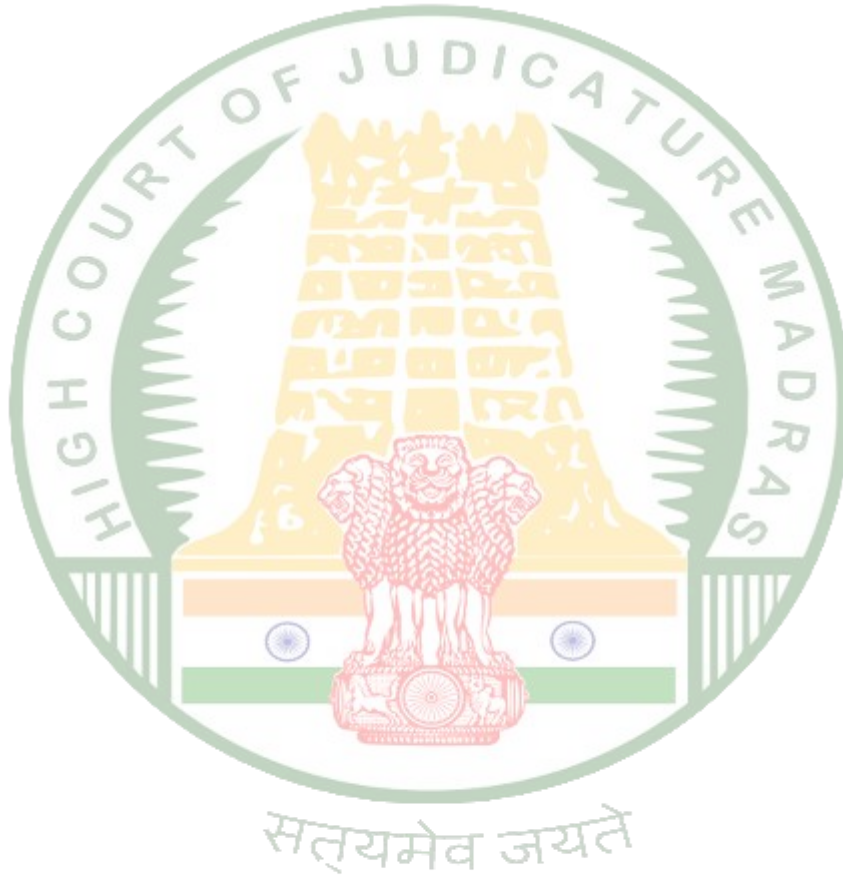
4. The Income Tax Officer,
Company Ward-I, Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.2364

+1cc to M/s.N.Muthukumar, Advocate, S.R.No.1844

Tax Case Appeal No.1253 of 2009 and
M.P. No.1 of 2009

cs (CO)
rv (04/02/2021)



WEB COPY