IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.NO.257 OF 2017

The Commissioner of Income Tax,
Corporate Circle 3(1),
Chennai - 600 034. ... Appellant

.Vs.

M/s.Ticel Bio Park Limited,
No.5, Taramani Road,
Taramani,
Chennai – 600 113. ... Respondent

PRAYER:-

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "B" Bench, dated 25.11.2016 in I.T.A.No.2293/Mds/2015 for the Assessment Year 2007-2008.

This Appeal filed against the Commissioner of Income Tax (Appeals)-II, Chennai - 600034 in I.T.A.No.101/2014-2015/CIT(A)-II, dated 13/10/2015, PAN.No.AABCT5758L for the assessment year 2007-2009 against the Deputy Commissioner of Income Tax Company Circle-III(2), Chennai - 34 in PAN.No.AABCT5758L for the assessment year 2007-2008.

For Appellant : Mr.M.Swaminathan,
Sr. Standing Counsel
Assisted by Mrs.V.Puspha, JSC

For Respondent : Mr.R.Venkatnarayanan,
For Mr.Subbaraya Aiyar Padmanaban

JUDGMENT
(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.2293/Mds/2015 in respect of the Assessment Year 2007-2008 on the file of the Income Tax Appellate Tribunal, Chennai, "B" Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2. The assessee has let out premises and received Rental Income. The income, which was classified as income from house property. is not eligible for deduction under section 80IA of the Income Tax Act. Challenging the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) and the appellate authority found that the income from letting out of the lab premise is to be classified as "income from business", therefore, eligible for deduction under section 80IA. Aggrieved over the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal contending that even if the lab was let out, the rental income from lab was to be classified as "income from house property", therefore, not eligible for deduction under section 80IAof the Act. The Tribunal dismissed the appeal filed by the Revenue. Challenging the same, the Revenue has filed the above appeal.

3. The appellant has raised the following substantial question of law in the above appeal:-

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the lease rent income from providing build up lab space or industrial use to various lessees would constitute income from business and was eligible for deduction u/s 80IA?
>
> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in allowing the claim of deduction u/s 80IA(4)(iii) when provisions of section 80IA(4)(iii) are applicable only for the profits derived out of development and sale of built up space to a person operating an maintaining the said space either the developer himself or to a third party and not applicable for rented property?"

4. When the Tax Case Appeal is taken up for hearing, Mr.M.Swaminathan, learned Senior Standing Counsel assisted by V. Pushpa, learned Junior Standing Counsel appearing for the

appellant fairly submitted that the substantial questions of law that arise for consideration in the above appeal have already been decided against the Revenue and in favour of the Assessee in the Judgment dated 25.08.2020 made in T.C.A.No.1035 of 2015 [Commissioner of Income Tax, Chennai v. M/s.Ticel Bio Park Limited, Chennai] wherein the Division Bench of this Court held as follows:-

> "4. The appellant filed the present appeal and suggested the following substantial questions of law:-
>
> > "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the lease rent income from providing build up lab space or industrial use to various lesses would constitute income from business and was eligible for deduction u/s 80IA?
> >
> > 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate was right in allowing the claim of deduction u/s 80IA(4)(iii) when provisions of section 80IA(4)(iii) are applicable only for the profits derived out of development and sale of built up space to a person operating an maintaining the said space either the developer himself or to a third party and not applicable for rented property?"
>
> 5. The learned Standing Counsel for the department has submitted that the lease rental received by the respondent/assessee will not constitute income from the business and it is eligible for deduction under Section 80IA. The learned counsel also contended that the Tribunal, without considering the case on merits, has dismissed the appeal as under:-
>
> > "3. After hearing both the sides, we are of the opinion that similar issue was considered by this Tribunal in assessee's own case for the assessment year 2008-09 in ITA No.2123/Mds/2011, dated 2.4.2013, wherein deduction u/s.80IA(4)(iii) of the Act was granted to the assessee on the income earned from let out of built up lab space by providing

infrastructure facilities. While deciding this issue, the Tribunal, following the judgment of the Jurisdictional High Court in the case of CIT v. Elnet Technologies Ltd. in Tax Case (Appeal) No.391 and 392 of 2007 dated 15.10.2012, has observed as follows:-

> "7. We have heard both sides, perused the orders of the Assessing Officer and CIT(A). After giving thoughtful consideration to the rival contentions, in the backdrop of the facts stated hereinabove, we are of the view that the precise question involved in the appeal is as to whether the assessee, who has raised rental income etc. by providing infrastructure facilities in an industrial part is entitled for deduction under section 80lA (4)(iii) or not. Proceeding to decide this question, we find from the case law cited by the assessee in CIT vs. Elnet Technologies Ltd. (supra) that the Hon'ble Jurisdictional High Court has settled the very issue in favour of the concerned assessee and against the Revenue in its arguments. No distinguishing features have either been pointed out by the Revenue nor they emanate from the facts of the case.
>
> Accordingly, we confirm the findings of the CIT(A) under challenge."

In view of this, we are inclined to hold that the assessee is entitled for deduction u/s.80IA(4)(iii) of the Act."

He, therefore, contended that the Tribunal has not considered the case on merits and prayed for setting aside the order passed by the Tribunal.

6. On the other hand, the learned counsel for the respondent/assessee has pointed out that the case on hand is covered by the Judgment of this Court rendered in the case of CIT v. Elnet Technologies Ltd. in Tax Case (Appeal) No.391 and 392 of 2007 dated 15.10.2012 and in the case of CIT vs. Chennai Properties and Investments Ltd. He submitted that this Court, following the aforesaid

two Judgments, has passed a detailed order in the case of Principal Commissioner of Income Tax-4 v. M/s.Khivraj Motors Pvt. Ltd., in TCA.Nos.314&315 of 2017, dated 27.07.2020, and therefore, he prayed for dismissal of the present appeal.

7. We have heard the learned Standing Counsel for the appellant/department as well as the learned Counsel appearing for the respondent/assessee and perused the materials available on record.

8. The issue involved in the case on hand is no longer res-integra and it is already covered by the Judgment of this Court rendered in the above said Judgments as stated by the respondent/assessee. Therefore, we do not see any question of law arising for our consideration in the present appeal. The views of the authorities below are correct and in accordance with law and do not call for any interference. Accordingly, the appeal is dismissed."

5. Mr.R.Venkatnarayanan, learned counsel appearing for the respondent submitted that in view of the ratio laid down by the Division Bench of this Court in T.C.A.No.1035 of 2015 [cited supra], the appeal may be dismissed.

6. Having regard to the submissions made by the learned counsel on either side, following the ratio laid down in the Judgment dated 25.08.2020 made in T.C.A.No.1035 of 2015 [cited supra], the questions of law are decided against the Revenue and in favour of the assessee. Accordingly, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

To

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

2. The Commissioner of Income Tax(Appeals)-II,
   No.121, Mahatma Gandhi Road,
   Chennai - 600034.

3. The Deputy Commissioner of Income Tax
Company Circle-III(2),
Chennai - 600034.

4. The Commissioner of Income Tax,
Corporate Circle 3(1),
Chennai - 600 034.

+1cc to Mr.Subbaraya Aiyar Padmanaban, Advocate, S.R.No.35129
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.35131

T.C.A.NO.257 OF 2017

VSN-II(CO)
PBS/18/08/2021