

Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/2/2018
(Old No.GA/1616/2018)
ITAT/200/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 1, KOLKATA

-Versus-

M/S. SHALIMAR PELLET FEEDS LTD.

*For the Appellant: Ms. Sucharita Biswas, Adv.
Mr. Soumen Bhattacharyya, Adv.*

*For the Respondent: Mr. J. P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
Mr. Sourav Chunder, Adv.*

Heard on : 22.02.2022

Judgment on : 22.02.2022

T. S. SIVAGANANAM, J. : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 2nd June, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "C" Bench (the

'Tribunal' in short) in IT(SS)A Nos.13 to 18/Kol/2016 for the assessment years 2008-09 to 2013-14.

The appeal has been filed by the revenue raising the following substantial questions of law for consideration:

- "(1) *Whether in the facts and circumstances of the case, the learned Tribunal was justified in law and on facts in upholding the assessee's appeal in which the assessee had challenged the assumption of jurisdiction by the assessing officer to make the assessment under Section 153A/143(3) of the Income Tax Act, 1961 on the ground that no incriminating documents was found and/or seized during search?*
- (2) *Whether in the facts and circumstances of the case, the learned Tribunal was justified in allowing deduction under Section 80IB(5) of the Income Tax Act, 1961 to the assessee by wrongly holding that the process of making poultry feeds as manufacture or production of article or thing for the purpose of Section 80IB(5) of the Income Tax Act, 1961?*
- (3) *Whether in the facts and circumstances of the case, the learned Tribunal was justified in holding that disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 will not apply where no exempt income is received or receivable during the relevant previous year or by ignoring the provisions of Rule 8D that provides for computation of expenditure in respect of not only those investments, income from which does not form part of total income, but also those investments, income from which shall not form part of total income?*

We have heard Ms. Sucharita Biswas, learned standing counsel assisted by Mr. Soumen Bhattacharyya, learned advocate appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel assisted by Ms. Swapna Das, Mr. Siddharth Das and Mr. Sourav Chunder, learned advocates appearing for the respondent/assessee.

The order passed by the tribunal, impugned in this appeal, is a composite order covering six assessment years, i.e., 2008-09 to 2013-14. It is not disputed by the revenue that in so far as the appeals filed by the revenue before this Court for the assessment years 2008-09, 2009-10 and 2010-11 are hit by the circular issued by the Central Board of Direct Taxes (CBDT) and the appeals cannot be pursued by the revenue on the ground of low tax effect. For such reason, appeals filed by the revenue for the aforementioned three years are dismissed.

Substantial question of law no.1 arises for consideration for the assessment year 2011-12 and substantial questions of law nos.2 and 3 arise for the assessment years 2011-12, 2012-13 and 2013-14. So far as the substantial question of law no.1 is concerned, as to whether the assumption of jurisdiction by the assessing officer under Section 153A/143(3) of the Act was valid or not, is an issue which can be decided if necessary after taking a decision on the other questions which arise in the three assessment years. In case the other questions of law, namely, 2

and 3 are decided in favour of the assessee, then there may not be a need for answering question no.1 which arises only for the assessment year 2011-12. Therefore, first we consider substantial question of law no.2.

This is with regard to the claim for deduction under Section 80IB(5) of the Act which was denied by the assessing officer, granted by the Commissioner of Income Tax (Appeals) (CIT(A)) which was affirmed by the Tribunal. The assessee claimed deduction under Section 80IB of the Act on the ground that the activity done by them in their factory is a manufacturing activity by manufacturing poultry feed and, therefore, they are entitled for deduction. The assessing officer was of the view that there was no manufacturing done by the assessee but what was done by the assessee is mixing various product, each one of them had an individual identity and cannot be construed to be an input for manufacturing of poultry feed. Therefore, the claim for deduction was denied. Before the CIT(A), the assessee had explained the entire manufacturing process which has been recorded by the CIT(A) in paragraph 2.7 of the order dated 11th February, 2016. From the said finding recorded by the CIT(A), we find that the process adopted by the assessee cannot be said to be a mere act of mixing of various individual products to turn out to be a poultry feed. The process involves steam cooking which is done after the materials are mixed and the assessee has a one tonne per hour

boiler which generates steam at 10 kgs/cm² pressure and they also have insulated pipeline which carries the steam to the pellet section. The pressure reducing valve (PRV) is fitted before the pellet section which is reducing the pressure from 10 kgs to 1.5 kg/cm² which will ensure that the steam entering the conditioning section is released slowly into the material for good conditioning. Thereafter, there are two other conditioning processes in which the poultry feed comes into contact with steam which is stated to ensure that the starch contained in the feed is gelatinised which is better for the growth of the chicken and at that level the feed attains a temperature of 85⁰C thereby all the bacteria like E Coli, salmonella and other microbes get destroyed. After conditioning, the product goes in the pelleting section, then to the cooling section, then to the crumbling section, then to the sieving section and after passing the quality control test, it is ready for bagging. The assessee had also furnished details as to what are the raw materials required to make the poultry feed. This has been noted by the CIT(A) in paragraph 2.7.3 onwards of the order.

The list of micro ingredients, list of vitamins and the list of minerals have also been mentioned. Noting all these facts and also taking into consideration the order passed by the tribunal in the case of *DCIT-Cir-2/Kol Vs. Amricon Agrovest* (ITA No.827/Kol/2012 dated 13.8.2013 where the assessee produced

poultry feed and the tribunal after examining the entire process granted relief to the assessee. The CIT(A) also referred to the decision in the case of *Komarala Feeds Vs. DCIT (1999) 18 CCH 087 (ITAT Bangalore)*. In the said decision the tribunal held that while the raw materials individually can be eaten by both human beings as well as animals, the end product can be eaten only by animals. Thus, noting the factual position, the CIT(A) held that from the details filed by the assessee, it is clear that the end product of such poultry feed cannot be reversed back to its original raw materials/ingredients. The revenue challenged the order before the tribunal. The tribunal also examined the factual position and took note of various other decisions as also that the Central Government has notified the poultry feed industry under Section 80IB(4) and other observations, the appeal filed by the revenue was dismissed.

The learned counsel for the appellant/revenue submits that the process undertaken by the assessee is only mixing and, therefore, the assessing officer was right in denying the relief. In support of her contentions, the learned counsel referred to the decision of this Court in the case of *PCIT, Kolkata Vs. V.N. Enterprises Limited* in ITAT No.129/2016 dated 30.9.2021. This decision is pressed into service to buttress her submission that when there is ambiguity in an exemption provision, the benefit has to go to the revenue.

Further, the learned senior standing counsel referred to the decision in the case of Commissioner of Income Tax Vs. Tara Agencies [2007] 292 ITR 444 (SC). It is submitted that the decision in Tara Agencies was not placed before this Court when judgment was rendered in the case of Principal Commissioner of Income-Tax Vs. Sona Vets Pvt. Ltd. [2020] 424 ITR 387 (Cal) which held in favour of the assessee.

Firstly, the revenue has not been able to dislodge the factual findings recorded by the CIT(A) after examining the process undertaken by the assessee. On going through the materials placed before the CIT(A) which have been recorded in the order, we have no hesitation to hold that the process undertaken by the assessee in producing the poultry feed amounts to manufacture. The simple test which can be applied is to examine as to whether the individual ingredients which are mixed together to form the poultry feed can be recovered and brought back to its original position. After the process is completed, if such reversal is not possible then it goes without saying that the final product has a distinct and separate character and identity. The learned senior standing counsel submits that the process involves only mixing of all the ingredients which ingredients are capable of being consumed as such even by human beings. In our view, this may not be the right test because though the individual ingredients are capable of being consumed by human beings, the end product,

namely, the poultry feed obviously cannot be consumed by human beings. Therefore, the individual ingredients lose their identity and get merged with the final product which is a separate product having its own identity and characteristics. Therefore, we are of the view that the CIT(A) and the tribunal were right in holding that the process undertaken by the assessee amounts to manufacture. So far as the decision in the case of V.N. Enterprises Limited is concerned, the question which was framed in the said appeal was whether the assessee therein will be entitled to exemption under Section 10B of the Act for business of blending of tea. The learned senior counsel for the respondent/assessee submits that in the said case a review application has been filed by the assessee raising several issues. Be that as it may, the said decision arose out of interpretation and the applicability of Section 10B on the particular process adopted by the assessee therein in the light of the amendment by substitution done in Section 10B in the year 2001. Therefore, the Hon'ble Division Bench while considering the said provisions came to the conclusion that there was some ambiguity and, consequently, held that in case of ambiguity in any exemption provision, the benefit has to go to the revenue. To be noted that Section 10B as it stood prior to 2001 had an expanded definition of the term "manufacture" which included "process". Therefore, in our considered view, the decision in V.N. Enterprises Limited may not render assistance to

the case of the revenue. The decision in Sona Vets has considered the case of an assessee who was also engaged in producing poultry feed. The Court has devoted several paragraphs of its judgement to examine as to what was the process undertaken by the assessee therein and concluded that the process undoubtedly amounts to manufacture. It may be true that the Court had referred to the judgement which was cited in paragraph 11 of the order. The argument of the learned senior standing counsel is that the decision of the Hon'ble Supreme Court in Tara Agencies was not placed before the Division Bench while rendering the decision in Sona Vets Pvt. Ltd. In our considered view, that may not make the judgement in Sona Vets Pvt. Ltd. to be inapplicable to cases where similar activities were carried on. In fact, in the case of Tara Agencies the process was blending of tea and obviously the process which was mentioned therein was different and distinguishable as that of the process of making poultry feed. Therefore, we would be well-justified in following the decision in Sona Vets Pvt. Ltd. which had considered the same product as that of the product produced by the assessee. Therefore, we hold that the tribunal was right in confirming the order of the CIT(A) and granting relief under Section 80IB of the Act. In the result, the substantial questions of law framed on this issue are decided against the revenue.

The next substantial question of law is with regard to the disallowance under Section 14A of the Act. The tribunal after noting several decisions has directed the assessing officer to compute the disallowance as per Rule 8D by taking into consideration only those shares which have yielded dividend income in the year under consideration. Though the Tribunal has noted the decision of the Tribunal in REI Agro Ltd. Vs. DCIT (2013) 35 taxmann.com 404, there are several other decisions on the said point and the machinery provision under Rule 8D can be applied only with regard to the shares which yielded dividend income in the year under consideration. Therefore, we find that the tribunal rightly applied the legal principle and granted relief. Accordingly, the substantial question of law framed on the said issue, namely, the deduction under Section 14A of the Act is decided against the revenue.

Thus, we are left with the substantial question of law no.1 which arises only for the assessment year 2011-12. As prefaced earlier, the decision on this substantial question of law is not required to be answered as the issue has become academic more particularly in the light of the conclusion arrived at by us while answering substantial questions of law no.2 and no.3. Accordingly, the substantial question of law no.1 is left open.

In the result, the appeal (ITAT 200/2018) filed by the revenue stands dismissed and the substantial questions of law

nos.2 and 3 are decided against the revenue and substantial question of law no.1 is left open.

With the dismissal of this appeal, the stay application (IA No.GA/2/2018 (Old No.GA/1616/2018) stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)