



T.C.A. No.115 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **C.SARAVANAN**

T.C.A. No.115 of 2009

M/s.Fab N Fabrics
Suriyan Nagar, ABT Road
New Extension
Karuvampalayam
Tirupur - 641 607

.. Appellant

Vs.

The Assistant Commissioner of Income-Tax
Circle-I
Tirupur

.. Respondent

* * *

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench dated 19.08.2008 made in ITA No.196/Mds/2007.

* * *

For Appellant : Mr.C.J.Yeswanthram
for Mr.K.Vaitheeswaran

For Respondent : Mrs.S.Premalatha
for Mr.Swaminathan,



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Senior Standing Counsel
JUDGMENT

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

The appellant has filed this appeal against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench dated 19.08.2008 made in ITA No.196/Mds/07. By the impugned order, the Tribunal has reversed the decision of the Appellate Commissioner dated 13.10.2006 granting relief to the appellant herein. Earlier, the assessment was completed and an assessment order came to be passed under Section 143(3) r/w Section 147 of the Income Tax Act on 24.03.2006, whereby, 90% of the income derived by the appellant from processing charges was deducted for the purpose of determining the export turnover in terms of the decision of the Hon'ble Supreme Court in **CIT vs. K.Ravindranathan Nair** reported in **(2007) 295 ITR 228**.

2. When this appeal was admitted, this court had framed the following question as the substantial question of law for the purpose of answering the same under Section 260A of the Income Tax Act:

" Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that receipts such as fabrication charges, embroidery charges etc.,



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have no nexus with the export activity and warrants only 10% deduction as per Explanation (baa) to Section 80HHC of the Income Tax Act, 1961 while calculating business profit?

3. The impugned order of the Tribunal is sought to be assailed by the learned counsel for the appellant by stating that the observations in paragraph 21 of the decision of the Hon'ble Supreme Court in ***CIT vs. K.Ravindranathan Nair*** was merely an obiter and cannot be construed as a ratio and therefore, the substantial question of law, has to be answered in favour of the appellant herein. Specifically, the learned counsel for the appellant stated that the scope of the dispute which arose before the Hon'ble Supreme Court in the above case was, *whether the department was right in including processing charges, amounting to Rs.1,54,68,811/- in the total turnover while arriving at export profits under Section 80HHC(3) of the Act, as it stood at the material time.* It is, therefore, submitted that the observation in paragraph 21 of the above said case has been wrongly applied to the facts of the present case. That apart, the learned counsel for the appellant has also referred to few other decisions, which are as below:

(i) CIT Vs. Bangalore Clothing Co. (2003) 260 ITR 371;

(ii) Ingersoll-Rand (India) Ltd. vs. DCIT (2020) 427 ITR 158;

(iii) CIT vs. Sun Engineering Works (P.) Ltd. (1992) 198 ITR 297;



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(iv) Circular No.691 of 1991 dated 19.12.1991.

4. Learned standing counsel appearing for the Income Tax department defended the impugned order of the Tribunal and submitted that the present appeal is liable to be dismissed, as not only the issue has been answered against the assessee in the above cited case of the Hon'ble Supreme Court, but also in the case of ***VTM Limited vs. Deputy Commissioner of Income Tax dated 23.02.2021 in T.C.A. Nos.817 & 818 of 2010.***

5. We have considered the arguments advanced by the learned counsel appearing for the appellant and the learned standing counsel appearing for the Income Tax Department.

6. We have no doubt in applying the ratio of the Hon'ble Supreme Court in ***Ravindranathan Nair's*** case. In paragraph 21, the Hon'ble Supreme Court has clearly explained the scope of explanation to Section 80HHC with the following observations:

"21. At the outset, we may state that, in the present case, we are dealing with the law as it stood during assessment year 1993-94. At that time section 80HHC(3) of the Income-tax Act constituted a Code by itself. Subsequent



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amendments have imposed restrictions/qualifications by which the said provision has ceased to be a Code by itself. In the above formula there existed four variables, namely, business profits, export turnover, total turnover and 90 per cent of the sums referred to in clause **(baa)** to the said Explanation. In the computation of deduction under section 80HHC all four variables had to be taken into account. All four variables were required to be given weightage. The substitution of section 80HHC(3) secures profits derived from the exports of eligible goods. Therefore, if all the four variables are kept in mind, it becomes clear that every receipt is not income and every income would not necessarily include element of export turnover. This aspect needs to be kept in mind while interpreting clause **(baa)** to the said Explanation. The said clause stated that 90 per cent of incentive profits or receipts by way of brokerage, commission, interest, rent, charges or any other receipt of like nature included in Business Profits, had to be deducted from Business Profits computed in terms of sections 28 to 44D of the Income-tax Act. In other words, receipts constituting independent income having no nexus with exports were required to be reduced from Business Profits under clause **(baa)**. A bare reading of clause **(baa)(1)** indicates that receipts by way of brokerage, commission, interest, rent, charges, etc., formed part of gross total income being Business Profits. But for the purpose of working out the formula an *in order* to avoid distortion of arriving export profits clause **(baa)** stood inserted to say that although incentive profits and "independent incomes" constituted part of gross total income, they had to be excluded from gross total income because such receipts had



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*no nexus with the export turnover. Therefore, in the above formula, we have to read all the four variables. On reading all the variables it becomes clear that every receipt may not constitute sale proceeds from exports. That, every receipt is not income under the Income-tax Act and every income may not be attributable to exports. This was the reason for this court to hold that indirect taxes like excise duty which are recovered by the tax payers for and on behalf of the Government, shall not be included in the total turnover in the above formula (See: **CIT v. Lakshmi Machine Works 2006 (6) Scale 168/290 ITR 667 (SC).**)"*

7. In the light of the above decision of the Hon'ble Supreme Court, we are of the view that the substantial question of law raised in this case has to be answered against the appellant. Accordingly, the appeal is liable to be dismissed.

8. Tax Case Appeal is dismissed. No costs.

[S.V.N., J.] [C.S.N., J.]
17.10.2022

Asr

To
The Assistant Commissioner of Income-Tax
Circle-I
Tirupur



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S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

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