Court No. - 35

Case :- INCOME TAX APPEAL No. - 446 of 2009

Appellant :- M/S Phoenix Lamps Ltd.
Respondent :- Commissioner Of Income Tax
Counsel for Appellant :- Sujeet Kumar,O.S. Bajpai,V. N. Jha
Counsel for Respondent :- Shubham Agrawal,C.S.C.

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Sri Shashwat Bajpai, Advocate assisted by Sri Sujeet Kumar, learned Counsel for the assessee and Sri Shubham Agrawal, learned Counsel for the department.

This is an assessee's appeal under Section 260A of the Income Tax Act, 1961 against an order passed by the Tribunal dated 30.01.2009 whereby the Tribunal has taken a view that the assessee would not be entitled to the benefit of the provisions of Section 10A(6) of the Act in respect of three assessment years that is 1993-94, 1994-95, 1995-96. The questions of law sought to be answered are hereunder:-

"A. Whether on the facts and circumstances of the case, assessment years 1993-94, 1994-95 and 1995-96 can be treated as "relevant assessment years" for the purpose of Section 10A (4) and/or Section 10A (6) of the Act ?

B. Whether on the facts and circumstances of the case, the Tribunal's order is vitiated on the ground that it is based on wrong factual premises that the interest related to past years as well, while fact of the matter is that it did not relate to past years but only to future years ?"

It has come on record that the assessee has not claimed any deductions in respect of the years 1993-94, 1994-95, 1995-96. It is the contention of the assessee that with the coming of the amendment in the year 2003 they have become entitled to seek and carry-forward for the years 1993-94, 1994-95, 1995-96 and claim deductions on it. It is also stated by the counsel for the assessee that they have not claimed any exemptions for those years and they have not availed any double benefit under the various provisions of law and the schemes, which were available.

Learned Counsel for the assessee relies on a decision of Delhi High Court in the case of **Commissioner of Income-Tax v. TEI TECHNOLOGIES PVT. LTD.** reported in **(2014) 361 ITR 36 (Delhi)** wherein the Delhi High Court while considering the case of a similar nature found it fit to allow deductions to the assessee under Section 10A (6) of the Act.

Learned Counsel for the respondent has relied on a decision of Hon'ble Apex Court in the case of **C.I.T. & Anr. v. M/s Yokogawa India Ltd.** in **Civil Appeal No.8498 of 2013** dated 16.12.2016 and in paragraph no.13 of the said judgement the Apex Court has opined that "the retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what is provided by the Section as amended, in contrast to what was provided by the un-amended Section. <u>The true and correct purport and effect of the amended Section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word 'deduction' in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A as already discussed, it has to be understood that the Section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions."</u>

After hearing learned Counsels on both sides we are of the opinion that this matter requires reconsideration because one thing is clear on fact that the assessee had not claimed any benefit or any deduction in respect of the years 1993-94, 1994-95, 1995-96. It is also clear that no exemption was granted to the assessee.

Although, learned Counsel for the respondent has sought to argue that a specific bar was created by the 2001 amendment by which the right of the assessee to seek anything beyond 1st April, 2001 was not there and his rights stood extinguished or exhausted by way of deemed in fiction, we are unable to agree with that because the amendment, which came thereafter, allowed ten years relief. The intent of the legislature while making these amendments was certainly not to curtail relief to an assessee, who had not availed double benefit.

In the light of the aforesaid observations and decisions placed before us the matter requires reconsideration by the Tribunal. it may clarify the facts of the case fully and give to both parties an opportunity of hearing and pass fresh orders in accordance with law. It may do so within a period of six months from the date a certified copy of this order is being placed before it.

We decide the issue on the first question. The second issue already formulated may be considered at the later stage.

The appeal is disposed of as above. No costs .

Order Date :- 13.2.2017
S.P.

(Vinod Kumar Misra, J.) (Bharati Sapru, J.)