IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-11-2015

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

Tax Case Appeal No.1166 of 2015

Commissioner of Income Tax
Company Circle-3(2)
Chennai. .. Appellant.

Versus

M/s.Ucal Fuel Systems Limited
Raheja Towers 7th Floor, Unit 705,
No.177, Anna Salai,
Chennai 600 002. .. Respondent.

Prayer: Appeal presented to the High Court against the order of the Income Tax Appellate Tribunal Madras `A' Bench, dated 26.6.2015, in ITA No.1107/MDS/2015.

For Appellant : Mr.M.Swaminathan

For Respondent : Mr.A.S.Sriraman

O R D E R

This Tax Case Appeal has been filed against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, dated 26.6.2015, made in I.T.A.No.1107/Mds./2015.

2. The brief facts of the case, necessary for the disposal of the appeal, are as follows:

2.1) The assessee company had been engaged in the manufacturing of carburettor fuel pumps for two wheelers and four wheelers. It had filed its return, for the assessment year 2005-2006, declaring an income of Rs.13,64,09,870/- and a revised return had been filed, declaring an income of Rs.19,47,94,750/-. The case was selected for scrutiny. Notice under Section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as `the Act'), had been issued. The assessees claim of deduction, under Section 80IA, for a sum of Rs.85,35,842/-, had been disallowed on the ground that, as per the provisions contained in Section 80IA(5), the profit and gains of an eligible business, to which sub section (1) would apply, shall, for the purpose of determining the quantum of deduction, under the said sub section, for the assessment year immediately succeeding the initial assessment year or any subsequent year, be computed, as if such eligible business was the only source of income of the assessee company during the previous year relevant to the initial assessment year and to every subsequent assessment year upto, and including the assessment year for which the determination is to be made.

2.3) Aggrieved by the assessment order, the assessee company had preferred an appeal before the Commissioner of Income Tax (Appeals)-III, in I.T.A.No.380/07-08/A.III. The Commissioner of Income Tax (Appeals)-III,

by his order, dated 23.6.2010, had allowed the appeal of the assessee regarding the disallowance, under Section 80IA of the Act, relying on the decision of the Income Tax Appellate Tribunal, made in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368), and M/s.Mohan Breweries and Distelleries Limited Vs. ACIT, 2008 (116 ITD 241).*

2.4) Aggrieved by the order passed by the Commissioner of Income Tax (Appeals)-III, the department had preferred an appeal before the Income Tax Appellate Tribunal, in I.T.A.No.1107/Mds./2015. The Tribunal, by its order, dated 26.6.2015, had dismissed the appeal filed by the department, following the decision of this court in the case of *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368).*

2.5) Challenging the order of the Tribunal, dated 26.6.2015, the department has filed the present Appeal, before this Court, under Section 260A of the Act, raising the following substantial questions of law.

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was in right in allowing the deduction under Section 80IA of the Income Tax Act, when there is no positive income from the industrial undertaking during the initial assessment year?
>
> 2. Whether on the facts and in the circumstances of the case, the ITAT is right in holding that the assessee is entitled to deduction under Section 80IA following the decision of the jurisdictional High Court in the case of *Velayudhaswamy*

Spinning Mills (340 ITR 477) when the same is pending before the Hon'ble Supreme Court in SLP Civil 1136/11?

3. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was correct in holding that the initial assessment year to Section 80IA(5) would only mean the year of claim of deduction under Section 80IA and not the year of commencement of eligible business?"

3. The learned counsel appearing on behalf of the department had raised the following grounds:

"A. The order of the Appellate Tribunal is erroneous in law and opposed to the facts and circumstances of the case.

B. The Income Tax Appellate Tribunal erred in holding that the assessee is entitled to deduction under Section 80IA.

C. The Income Tax Appellate Tribunal erred in allowing the deduction under Section 80IA of the Income Tax Act when there is no positive income from the industrial undertaking during the financial assessment year.

D. The Income Tax Appellate Tribunal ought to have appreciated that as per section 80IA (5) the undertaking eligible for deduction u/s 80IA should be treated as only source of income for computing the quantum of deduction.

E. The Income Tax Appellate Tribunal erred in following the decision of Jurisdictional High Court in the case of M/s.Velayuthasamy Spinning Mills when the same is in appeal before the Hon'ble Supreme Court.

F. The Income Tax Appellate Tribunal ought to have observed that since sub-section 5 of Section 80IA starts with a non-obstante clause, the restriction put in sub-section 5 will

prevail and deduction under 80IA has to be restricted accordingly.

G. The Income Tax Appellate Tribunal ought to have appreciated that as per provisions of section 80IA(5) the undertaking eligible for deduction should be treated as only source of income for computing the quantum of deduction."

4. Per contra, the learned counsel appearing on behalf of the respondent had submitted that the decision rendered in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368),* squarely applies to the facts of the present case. He had further submitted that a Division Bench of this court had rendered a similar decision, in *Commissioner of Income-Tax, Circle-I, Tirupur Vs. R.Yuvaraj, [2015] 57 Taxmann.com 252 (Madras).* In view of the above decisions, the appeal filed by the Revenue is liable to be dismissed, as it is devoid of merits.

5. We have heard the learned the counsels appearing on behalf of the appellant, as well as the respondent. We have also perused the records available before this Court.

6. It is noted that the facts and circumstances based on which the present Appeal had arisen are similar to those which had already been decided by this court in the cases cited supra. Further, in a batch of cases in *CIT Vs. Eastman Exports Global Clothing (P) Ltd. [2015] 229 Taxman*

449/54 Taxmann.com 408 (Madras), this Court had followed the decision rendered in *Velayudhaswamy Spinning Mills (P) Ltd. Vs. Assistant Commissioner of Income Tax, (231 CTR (Mad.) 368),* and had decided the matter in favour of the assessee and against the Revenue. Taking note of the above said decisions, we are constrained to dismiss the present Appeal filed by the Revenue, confirming the order passed by the Tribunal, dated 26.6.2015. Accordingly, the questions of law raised in the appeal are answered against the Revenue and in favour of the assessee, for the reasons stated above. Accordingly, the Tax Case Appeal stands dismissed.

(M.J.J.,) (S.V.J.,)

Index:Yes/No 23-11-2015
Internet:Yes/No
csh

To

Commissioner of Income Tax
Company Circle-3(2)
Chennai.

M.JAICHANDREN,J.
AND
S.VIMALA,J.

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