

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.10 of 2008

Tamilnadu Warehousing Corporation
No.100, Anna Salai, Guindy
Chennai – 600 032.

.. Appellant

Vs.

The Deputy Commissioner of Income-tax
Company Circle III(1)
Chennai – 600 034.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 27.9.2007 made in I.T.A.No.1487/Mds/2002 for the assessment year 1998-1999.

For Appellant : Dr.Anita Sumanth

For Respondent : Mr.M.Swaminathan
Standing Counsel

J U D G M E N T

(Delivered by *R.SUDHAKAR, J.*)

The assessee has filed this appeal assailing the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 27.9.2007 made in I.T.A.No.1487/Mds/2002 for the assessment year 1998-1999 and the same was admitted on the following questions of law:

(2)

- (i) Whether the Tribunal is right in law in allowing the department's appeal concerning exemption under Section 10(29) of the Income Tax Act?
- (ii) Whether the Tribunal is right in law in not noting that the Supreme Court had referred the identical issue to a Larger Bench of the Supreme Court for its consideration on account of conflicting decisions of two benches of the Supreme Court?
- (iii) Whether the Tribunal is right in law in not holding that the appellant is engaged in warehousing activities as a result of which, all its incomes are directly derived from the same, thus being eligible for exemption under Section 10(29) of the Income Tax Act?
- (iv) Whether the Tribunal is right in law in holding that the incomes from supervision charges, fumigation activities and weigh bridge receipts are not eligible for exemption under Section 10(29) of the Income Tax Act?

2.1. The facts in a nutshell are as under: The appellant is a Government of Tamil Nadu sponsored undertaking. The assessee, during the course of their business operations, derived income from warehousing charges, supervision charges, weigh bridge charges and other receipts. The assessee claimed the above income as exempt under Section 10(29) of the Act. The Assessing Officer held that only the amount received under the head storage charges is entitled to exemption under Section 10(29) of the Act and disallowed the other receipts like supervision charges, fumigation

(3)

charges, weigh bridge receipts, etc.

2.2. The assessee appealed to the Commissioner of Income Tax (Appeals), who partly allowed the appeal and granted exemption in respect of the supervision charges, weigh bridge receipts and fumigation charges totalling Rs.46,91,920/-. However, the Commissioner of Income Tax (Appeals) disallowed some of the claims made by the assessee stating that they are not connected with the maintenance of warehouses.

2.3. Calling in question the said order, the Revenue has preferred appeal before the Tribunal. The Tribunal, relying upon the earlier order passed by it in the assessee's own case for the assessment years 2000-2001 to 2002-2003 in I.T.A.Nos.1037 to 1042/Mds/06, dated 27.7.2007, allowed the appeal filed by the Revenue holding as under:

"3. We have heard both the parties and perused the materials on record. Similar issue came up for hearing before this Tribunal, Chennai Bench in assessee's own case for the asst.years 2000-01 to 2002-03 in I.T.A.Nos.1037-1042/Mds/06 dated 27.07.07 wherein it the Tribunal held as follows:

'In the case of Orissa State Warehousing Corporation Ltd. and Rajasthan Ware Housing Corporation vs. CIT (237 ITR 589) it was held as under:

'On a plain reading of section 10(29) of the Income-tax Act, 1961, it appears that the pre-requisite element for the entitlement as regards the claim for exemption is the income which is derived

(4)

from letting out of godowns or warehouses for storage, processing or facilitating marketing of commodities and not otherwise. The Legislature has been careful enough to introduce in the section itself, a clarification by using the words 'any income derived therefrom', meaning thereby obviously for marketing of commodities by letting out of godowns or warehouses for storage, processing or facilitating the same. If the letting out of godowns or warehouses is for any other purpose, the question of exemption would not arise. Section 10(29) is categorical in its language and this exemption is applicable only in the circumstances as envisaged under the section. The word 'any income' as appearing in the body of the statute is restrictive in its application by reason of the user of the expression 'derived from'. Sections 10(20A), 10(21), 10(22B), and section 10(27) show that wherever as a matter of fact the Legislature wanted an unrestrictive exemption the same has used 'any income' without any restriction so as to make it explicit that the entire income of the assessee would be exempt. Having due regard to the language used, the question of exemption would arise pertaining to that part of the income only which arises or is derived from the letting of godowns or the warehouses and for the purposes specified in section 10(29). The statute has been rather categorical and restrictive in the matter of grant of exemption: storage, processing or facilitating the marketing of the commodities are

(5)

definitely regarded as three different forms of activities which are entitled to exemption in the event of there being any income therefrom. In the event the letting of godowns or warehouses is for any other purpose or if income is derived from any other source, then and in that event such an income cannot possibly come within the ambit of section 10(29) of the Act and is thus not exempt from tax.'

5. After going through the facts of the case and in view of the judgment of the Supreme Court cited supra, we hold that item no.2 to 11 listed in para 4 above can not be eligible for exemption u/s. 10(29) of the I.T.Act. Only Item no.1 listed in para 4 viz. Warehousing storage rent is entitled to deduction u/s.10(29) of the Act. With regard to exemption of three items viz., supervision charges, fumigation charges and weight b ridge receipts, as per the judgment of the Supreme Court cited supra, these are not eligible for deduction u/s. 10(29) of the I.T.Act. Hence in our opinion the Learned Commissioner of Income-tax (Appeals) is not justified in allowing the claim of the assessee on these three items. Accordingly we reverse the order of the CIT (Appeals) on these issues and the appeal of the revenue is allowed.'

4. Respectfully following the above decision of the Tribunal in assessee's own case, the appeal of the revenue is allowed."

(6)

2.4. Impugning the said order, the assessee has preferred this appeal on the questions of law, referred supra.

3. We have heard Dr.Anita Sumanth, learned counsel appearing for the assessee and Mr.M.Swaminathan, learned Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. The main plank of the argument of the learned counsel for the assessee is that supervision charges, fumigation charges and weigh bridge receipts are all incidental activities connected with the business of the assessee, namely, warehousing and storage, and therefore they are entitled to exemption under Section 10(29) of the Act.

5. Section 10(29) of the Act, as it stood then, reads as under:

“Section 10. Incomes not included in total income.--In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--

(1) to (28) ***

(29) in the case of an authority constituted under any law for the time being in force for the marketing of commodities, any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities”

A bare reading of the said provision makes it clear that any income derived

(7)

from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities would be eligible for such benefit of exemption.

6. In the case on hand, the receipts mainly disputed by the Revenue are supervision charges, fumigation charges and weigh bridge receipts. When once goods are stored in the warehouses, it is the duty of the warehousing authorities to ensure that no damage or loss is caused to the same. Therefore, the warehousing authorities maintain security for supervision of the warehouses and the goods therein. Similarly, maintaining weigh bridge is essential for the purpose of carrying on warehousing business. Likewise, for proper maintenance of the goods from pests, fumigation is also essential. Therefore, all the three activities, referred supra, are integral part of the business of warehousing and hence, they would squarely fall within the ambit of Section 10(29) of the Act and are eligible for grant of exemption.

7. In our considered opinion, the Tribunal without understanding the nature of the warehousing business, on an erroneous interpretation of the decision of the Supreme Court in *Orissa State Warehousing Corporation / Rajasthan State Warehousing Corporation v. CIT [1999] 237 ITR 589 (SC)* has come to the conclusion that the above said three activities are not in relation to warehousing business. In the impugned order, the Tribunal has merely followed its earlier decision in the assessee's own case for the assessment years 2000-2001 to 2002-2003 in I.T.A.Nos.1037 to

(8)

1042/Mds/06, dated 27.7.2007, without any analysis of the nature of the claim made by the assessee.

8. At this juncture, it would be apposite to state that the appeals filed by the assessee as against the order of the Tribunal passed in I.T.A.Nos.1037 to 1042/Mds/06, dated 27.7.2007, have been allowed by this Court in *Tamilnadu Warehousing Corporation v. Income-tax Officer (OSD)*, (2014) 363 ITR 1 (Mad.), holding as under:

“... supervision charges, fumigation service charges, weighbridge receipts, income from sale of tender forms and interest collected on belated refund of advances were income derived from incidental activities relating to warehousing of produce for storage, processing or facilitating the marketing of commodities. Thus, with the income having direct nexus to the activities, the assessee would be entitled to exemption under section 10(29) of the Act.”

9. For the foregoing reasons, the 4th question of law is answered in favour of the assessee and against the Revenue. In view of the finding rendered above, the questions of law (1) to (3) have become purely academic in this appeal.

In the result, this appeal is allowed and the order passed by the Tribunal is set aside. No costs.

(9)

(R.S.J.) (R.K.J.)
16.2.2015

Index : Yes
Internet : Yes
sasi

To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "C", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals) - III
Chennai.
4. The Deputy Commissioner of Income Tax
Company Circle I(1), Chennai.

(10)

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

T.C.(A).No.10 of 2008

16.2.2015