

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.2.2015

CORAM

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

T.C.(A).No.713 of 2007

International Components India Ltd.
7, Subbramaniasiva Salai
Industrial Estate
Maramalai Nagar
Chennai – 603 209.

.. Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle-II(3), Chennai.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 15.9.2006 made in I.T.A.No.307/Mds/2006 for the the assessment year 2000-2001.

For Appellant : Mr.Venkat Narayanan
for M/s.Subbaraya Aiyar

For Respondent : Mr.T.Ravi Kumar
Sr. 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 'A' Bench, Chennai, dated 15.9.2006 made in I.T.A.No.307/Mds/2006 for the the assessment year 2000-2001 and the same was admitted on the following questions of law:

(2)

- (i) Whether the Tribunal was right in holding that the assessing officer was justified in rectifying the intimation under Section 143(1) of the Act by resorting to provisions of Section 154 of the Act?
- (ii) Whether the Tribunal was right in law in holding that the question of admissibility of deduction of interest income under Section 10B of the Act is a mistake apparent from the face of the record and hence the intimation under Section 153(1) can be rectified in a proceeding under Section 154 of the Act?

2.1. The facts in a nutshell are as under: The appellant/assessee is engaged in the business of manufacturing and export of electronic battery charges and sub-assemblies and its profits are exempt under Section 10B of the Income Tax Act. For the assessment year 2000-2001, the assessee filed its return of income admitting income of Rs.25,48,580/- and the return was processed under Section 143(1) of the Act on 26.3.2002.

2.2. Subsequently, it was found by the Assessing Officer that the appellant has derived interest income of Rs.11,27,629/- from deposits with Corporation Bank, Electricity Board and on staff advances. The Assessing Officer was of the view that the interest income, as stated above, is not derived from the business of the undertaking and, therefore, the same is not eligible for exemption under Section 10B of the Act. On this premise, notice was issued to the assessee under Section 154 of the Act setting out proposals for rectification and after considering the reply submitted by the

(3)

assessee, the Assessing Officer excluded the interest income of Rs.11,27,629/- holding that the same is not eligible for exemption under Section 10B of the Act and assessed the same under the head other sources.

2.3. Challenging the said order, the assessee appealed to the Commissioner of Income Tax (Appeals) contending that the interest receipts had direct nexus with the assessee's business and, therefore, should be allowed as income from business undertaking and exemption should be granted under Section 10B of the Act. The Commissioner of Income Tax (Appeals) accepted the said plea raised by the assessee and allowed the appeal.

2.4. Aggrieved by the said order, the Revenue preferred appeal before the Tribunal. The Tribunal allowed the appeal of the Revenue and held as under:

"3. We have heard the rival submissions in the light of material placed before us and precedents relied upon. Return filed by the assessee was processed under section 143(1). Subsequently, it was found by the A.O. that assessee had interest income of Rs.11,27,629/- from deposits with Corporation Bank and assessee did recover interest from staff of loans given. On that basis it was concluded that since the interest income is not derived from the business of the undertaking, the same is not eligible for exemption under Section 10B. Ex consequenti, eligible deduction under Section 10B was reduced pro tanto by

(4)

resorting to the provisions of section 154.

4. As per the mandate of section 10B any profits derived by a 100% export oriented undertaking from the export of articles or things or computer software shall be exempted from tax for the specified number of years. It is obvious from the perusal of the section that profits must be derived from the export oriented undertaking from the export of articles. Hon'ble Supreme Court in the case of Pandian Chemicals Ltd. v. CIT (262 ITR 278 – SC) has held that interest on surplus funds cannot be said to be derived from industrial undertakings for the purpose of section 80HH.”

2.5. Calling in question the said order, the assessee has filed this appeal on the questions of law, referred supra.

3. We have heard Mr.Venkat Narayanan, learned counsel appearing for the assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the Revenue and perused the orders passed by the Tribunal and the authorities below.

4. The main plea raised by the learned counsel for the assessee is that the grant of deduction under Section 10B of the Act is a debatable issue, which does not fall within the purview of *prima facie* adjustment under Section 143(1) of the Act, and, therefore, rectification under Section 154 of the Act is not permissible, as the power of rectification can be invoked only in respect of mistakes apparent on the face of record.

5. The above said plea of the assessee *ex facie* cannot be countenanced in view of the decision of the Supreme Court in *Pandian Chemicals Ltd. v. Commissioner of Income-tax*, [2003] 262 ITR 278 SC, wherein it is held as under:

"It is clear, therefore, that the word 'derived from' in section 80HH of the Income-tax Act, 1961, must be understood as something which has direct or immediate nexus with the appellant's industrial undertaking. Although electricity may be required for the purposes of the industrial under-taking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with Electricity Board cannot be said to flow directly from the industrial undertaking itself.

The learned counsel appearing on behalf of the appellant has referred to several decisions of the Madras High Court in order to contend that the word "derived from" could be construed to include situations, where the income arose from something having a close connection with the industrial under- taking itself. All the decisions cited by the appellant have been considered by the Madras High Court in the case of *Pandian Chemicals Ltd.* [1998] 233 ITR 497. We see no reason to disagree with the reasoning given by the High Court in *Pandian Chemicals Ltd.*'s case [1998] 233 ITR 497 with respect to those decisions to hold that they do not in any way allow the word "derived" in section 80HH to be construed in the manner contended by the appellant. The learned counsel for the appellant then contended that having regard to the object with which section 80HH was introduced in the statute book, this court should give a

(6)

liberal interpretation to the words in a manner so as to allow such object to be fulfilled. The rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation as submitted by the appellant."

(emphasis supplied)

6. In the light of the above said decision, we are of the firm view that the interest earned from deposits with Corporation Bank, Electricity Board and on Staff advances does not have direct or immediate nexus with the business of the assessee's undertaking and consequently, they are not eligible for grant of deduction under Section 10B of the Act, which is akin to Section 80HH of the Act dealt with in the decision referred supra.

7. That apart, the Tribunal rightly relied upon a decision of this Court in *Southern Industrial Corporation Ltd. v. Commissioner of Income Tax, (2002) 258 ITR 481 (Mad)*, wherein it is held that a rectification to give effect to the law laid down by the Supreme Court is valid. The relevant portion of the said decision is extracted hereunder:

"When a statutory provision is interpreted by the Supreme Court in a manner different from the interpretation made in the earlier decisions of a smaller Bench, the order which does not conform to the law laid down by the larger Bench in the later decision which decision would constitute the law of the land and is to be regarded as the law as it always was, unless declared by the court itself to be prospective in

(7)

operation, would clearly suffer from a mistake which would be apparent from the record.”

(emphasis supplied)

8. In such view of the matter, we have no hesitation to hold that the order passed by the Assessing Officer under Section 154 of the Act is valid in the eye of law and the same has been rightly upheld by the Tribunal, as the true intent behind passing such a rectification order is to ensure that the law laid down by the Supreme Court in *Pandian Chemicals case*, referred supra, is *stricto sensu* given effect to.

For the foregoing reasons, this appeal is dismissed by answering the questions of law against the assessee and in favour of the Revenue. No costs.

(R.S.J.) (R.K.J.)
10.2.2015

Index : Yes
Internet : Yes
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(8)

To:

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

(9)

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

(sasi)

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