

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.01.2015

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH**

T.C.A. NO. 541 OF 2007

M/s.Premier Enterprises
SF No.30, Srivilliputtur Road
Sankarapandiapuram
(Via) Rajapalayam.

.. Appellant

- Vs -

The Deputy Commissioner of Income Tax
Virudhunagar.

.. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 9.6.05 passed by Income Tax Appellate Tribunal, 'C' Bench, Chennai, made in ITA No.1398/02.

For Appellant : Mr. P.J.Rishikesh

For Respondents : Mr. M.Swaminathan

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Income Tax Appellate Tribunal in dismissing the appeal filed by it, the assessee is before this Court challenging the said order by filing the present appeal. This Court, vide order dated 09.08.07 admitted the appeal by framing the following substantial questions of law :-

"1) Whether on the facts and in the circumstances of the case the Tribunal is right in holding the interest derived from the deposit cannot

be treated as income from business and hence the same is excluded for the purpose of calculating deduction u/s 80 HHC?

2) Whether on the facts and in the circumstances of the case the Tribunal is right in holding that the gross receipt interest income would be taken into account for the purpose of computing deduction u/s 80 HHC?"

2. The appellant/assessee is a 100% export oriented unit doing export business in cotton fabrics. For the assessment year 1994-1995, the assessee filed return of income on 31.10.94 and the same was processed under Section 143 (1) (a) of the Income Tax Act. It was noticed that the the assessee had made certain fixed deposit in banks and had treated the interest earned from the said deposit as business income and claimed deduction under Section 80 HHC of the Act. Therefore, the Assessing Officer excluded the interest earned out of those deposit from the head 'Business Income' and treated the same under the head 'Income from other sources' and recomputed the income under Section 80 HHC of the Act. Aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the CIT (Appeals).

3. The CIT (Appeals), allowed the appeal by treating the interest component earned from term guaranteed deposit and directed the Assessing Officer to treat the same as business income. Not being satisfied with the said order, the Department pursued the matter before the Tribunal.

4. Before the Tribunal, the appellant/assessee did not choose to defend the matter and, therefore, the Tribunal came to pass an exparte order holding that there was no record to

show that the deposit was made for the purpose of availing credit facilities or that there was compulsion for making such deposit. The Tribunal also further observed that the deposit was not made pursuant to any requirement imposed by the Bank at the time of sanctioning credit facilities.

5. In the present appeal, the above finding of the Tribunal is sought to be disproved by the appellant/assessee by relying upon the Bank's letter dated 2.8.89, where a limit sanctioned Term Loan was sanctioned subject to certain conditions. Reliance is placed on condition No.6 of the said letter to drive home the point that the said fixed term deposit was made for the purpose of availing the said credit facilities.

6. Heard the learned counsel appearing for the appellant/assessee and the learned standing counsel appearing for the respondent/Department.

7. The appellant/assessee claims to be a 100% export oriented unit, which fact is not in dispute. According to the assessee, for the purpose of availing term loan of Rs.21,40,000/=, the bank required the assessee to make a term deposit of Rs.15 Lakhs. In support of the said submission, reliance was placed by the learned counsel for the appellant/assessee on condition No.6 of the letter of the bank, dated 2.8.89 to stress that but for the condition imposed by the bank, there was no necessity for the assessee/appellant to make the term deposit. Condition No.6, which is pertinent to decide the case on hand, is extracted hereinbelow for better clarity:-

“6. Term Deposit of Rs.15.00 Lacs should be given as collateral security for the term loan.”

8. Condition No.6 as found in the bank's letter makes it absolutely necessary for the appellant/assessee to make a term deposit of Rs.15 Lacs for the purpose of availing credit facility. Therefore, for all purposes, the deposit so made by the appellant/assessee should be deemed to be a deposit made for the purpose of business and, therefore, the interest earned from such deposit should be treated as business income.

9. However, as is evident from the order of the Tribunal, the appellant/assessee did not pursue the matter sincerely before the Tribunal, but remained *exparte*. The appellant/assessee should have appeared before the Tribunal and explained the above position, which he had done before the CIT (Appeals) as is evident from the reasoning as reflected in the order of the CIT (Appeals). However, inspite of a finding by the CIT (Appeals) in his order about the need for deposit to be made for the purpose of availing credit facility, there is no reference to the above letter of the bank in the proceedings of the original authority or the Tribunal, but a reference about that portion of the findings of the CIT (Appeals) is found in the order of the Tribunal. The Tribunal was not in a position to consider this document, in the absence of the assessee/appellant and, therefore, it fell in error in coming to a conclusion that it is not a business income eligible for benefit under Section 80 HHC of the Act.

10. Since the primary document, which explains the nature of the transaction, which is

for the purpose of availing credit facility, has not been considered by the Tribunal, inspite of a reference of the same in the order of the CIT (Appeals) and in view of the appellant/assessee remaining exparte, we feel it appropriate that the matter should be remitted back to the Tribunal to reconsider the issue afresh in the light of the abovesaid document, which has been considered by the CIT (Appeals) and held in favour of the appellant/assessee.

11. Accordingly, the appeal is allowed by way of remand to the Tribunal. The Tribunal is directed to consider the issue afresh in the light of the document, which was considered by the CIT (Appeals) in favour of the appellant/assessee, viz., the letter of the bank dated 2.8.89 and pass orders thereon on merits and in accordance with law. However, there shall be no order as to costs.

(R.S.J.) (R.K.J.)
06.01.2015

Index : Yes/No

Internet : Yes/No

GLN

To

1. The Income Tax Appellate Tribunal
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