

(4926)

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 30.01.2008**

**CORAM**

**THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN**

**AND**

**THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN**

**T.C.NO.37 OF 2008**

**Commissioner of Income Tax**

**Chennai**

**... Appellant**

**Vs.**

**Southern Group Industries Limited**

**Raja Annamalai Building**

**19, Marshalls Road,**

**Chennai 8.**

**... Respondent**

**For Appellant: Mr.J.Narayanaswamy**

**Tax Case Appeal filed under Section 260-A of the Income-tax Act against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai in M.P.No.271/Mds/06 in I.T.A.No.156/Mds./01 dated 31.7.2007 for the assessment year 1997-98.**

**JUDGMENT**

**(Judgment of the Court was made by K.RAVIRAJA PANDIAN,J.)**

**This appeal is filed by the revenue against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai in M.P.No.271/Mds/06 in I.T.A.No.156/Mds./01 dated 31.7.2007 for the assessment year 1997-98 formulating the following question of law:**

**"1. Whether in the facts and circumstances of the case, the Tribunal was right in dismissing the Misc.Petition filed by the revenue wherein it was pleaded that the additional ground was not considered by the Tribunal while disposing the appeal?**

**2. The miscellaneous petition in M.P.No.271/Mds/06 in I.T.A.No.156/Mds./01 came to be filed by the revenue in the following circumstances:**

**The assessing officer while passing the assessment order for the assessment year 1997-98 inter alia restricted the deduction under Section 80IA to the business income and excluded the income from other sources. Aggrieved by the assessment order, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who allowed the said issue in respect of Section 43B in favour of the assessee.**

**3. Aggrieved against the order of the Commissioner of Income-tax (Appeals), the revenue filed appeal to the Tribunal. In the appeal, the issue relating to Section 80IA was not raised. It is the case of the revenue that during the pendency of the appeal before the Tribunal, additional ground contesting the allowance of deduction under Section 80IA was filed. Despite raising of additional grounds, that has not been considered by the Tribunal while passing the order on 20.8.2003. On that basis, the M.P. has been filed. The**

Tribunal after perusing the appeal folder has recorded a factual finding that no such additional ground has been raised and received by the Tribunal and as such the petition filed by the revenue that the additional ground in respect of the issue relating to Section 80IA was not considered was not correct when no such ground was in fact raised.

4. Learned counsel for the revenue submits that it is a fact that the assessing officer has raised such additional ground and that has been received by the authorised representative. He further admits that it is also true that in the appeal folder on the file of the Income-tax Appellate Tribunal, the additional ground raised is not available. In those circumstances he sought for liberty to file appeal by raising that ground.

5. We heard the argument of the learned counsel for the revenue.

6. What is put in issue in the present appeal is correctness of the order passed by the Tribunal in M.P.No.271/Mds/06 in I.T.A.No.156/Mds./01 dated 31.7.2007. When it is admitted that the appeal folder did not contain the additional ground, necessarily the M.P. has to be rejected and rightly the Tribunal has rejected the M.P. If the revenue is entitled to file an appeal by raising the issue as to the allowability of Section 80IA under the statute, it is well open to the revenue to do so, if they so advised.

With this observation, the appeal is dismissed as no question of law is involved.

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Copy to:

1. The Income-tax Appellate Tribunal  
Chennai.
2. The Commissioner of Income-tax  
Appeal (V)  
Chennai 600 034.
3. The Joint commissioner of Income-tax  
Special Range VI, Chennai 600 034.
4. The Income-tax Officer  
Company Circle VI(3),  
Chennai.