

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 1388/2006

04.12.2007

Date of Decision : December 4,2007

COMMISSIONER OF INCOME TAX ... APPELLANT

Through Ms. Prem Lata

Bansal, Advocate

Versus

M/S. ARVIND CONSTRUCTION CO. LTD. RESPONDENT

Through: Ms. Bhakti Pasrija, Advocate

ITA No. 705/2007

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CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON BLE DR. JUSTICE S. MURALIDHAR

ORDER

1. ITA No. 1388/2007 is directed against an order dated 31st March, 2006 passed

by the Income Tax Appellate Tribunal, New Delhi Bench G (Tribunal) in ITA

No. 492/Del/2001 for the Assessment Year 1997-98. ITA No. 705/2007 is directed

against an order dated 19th January, 2007 passed by the Tribunal (Bench F) in

ITA No. 1263/Del/2004 for the Assessment Year 2000-01. Since the same question

of law is urged by the Revenue in both the appeals, they are being disposed by

this common order.

2. The questions that have been urged by the Revenue for consideration in both

these appeals are under:

(1) Whether interest earned by the Assessee on RBI Bonds is the income derived by it from the business of industrial undertaking so as to be

eligible for deduction under Section 80HHB of the Income Tax Act, 1961

(2) Whether the Tribunal was correct in law in allowing

deduction under Section 80-IA of the Act to the Assessee on receipts from transportation of sleepers

3. The Assessee carried out certain construction works in two different projects in Iraq as a sub-contractor of the Indian Railway Construction

Corporation (IRCON). On account of the outbreak of war in Iraq, the payments

to IRCON were held up. Subsequently, by an agreement between the Governments of

India and Iraq, a settlement was arrived at by which the payments would be made

to IRCON on the deferred basis. The total sum due to the Assessee together with

interest was calculated at Rs.54.93 crores for the Assessment Year 1997-98 and

the said sum was settled as under:

(i) RBI Bonds

Rs.42,69,91,452/-

(ii) ECGC Bonds Rs.

5,61,12,153/-

(iii) Interest on RBI bonds Rs.

6,61,83,046/-

4. The Assessee claimed a deduction under Section 80HHB, inter alia, in respect of the interest on RBI bonds to the extent of Rs.6,61,83,046/-. The

Assessee also claimed deduction under Section 80-IA of the Act. The Assessing

officer (AO) declined the deduction on the ground that the interest on the RBI

bonds was not the income derived from the business activities of the Assessee.

Likewise, the AO also disallowed the deduction under Section 80-IA in relation

to transportation charges of Rs.54,92,85,651 which the Assessee had received for

transportation of certain sleepers made by it to the railway sites. The AO

noted that there was a separate agreement for transportation of sleepers and

therefore, the income therefrom was not derived from an industrial undertaking

as the transportation did not involve any manufacturing or production.

5. The Commissioner of Income Tax (Appeals) [CIT(A)] reversed the AO and

allowed the deduction to the Assessee under Section 80HHB in respect of the

interest on RBI bonds as well as the deduction under Section 80-IA in respect of

the transportation charges received by it. The Tribunal concurred with the view taken by the CIT (A) on both issues and that is how the Revenue has filed the present appeals.

6. It is contended by Ms. Prem Lata Bansal, learned Senior Standing counsel appearing on behalf of the Revenue, that the interest on RBI bonds could never been considered to be the income derived from the business activities of the Assessee. She drew a distinction between income from an activity which is attributable to an industrial undertaking and income that is derived from the business activities. She submitted that the CIT (A) erred in placing reliance upon the judgment in Commissioner of Income Tax v. Govinda Choudhary and Sons [1993] 203 ITR 881 (SC) because in the said case the Supreme Court was in fact dealing with the income that was incidental to and, therefore, attributable to the business carried on by the Assessee and not income that was derived from the business activity of the Assessee. Likewise, as regards the deduction claimed under Section 80-IA of the Act in respect of the transportation charges received by the Assessee for transportation of sleepers to the railway sites, she submitted that since there was a separate agreement for this purpose, such income could not qualify for the purposes of such deduction. Ms. Bansal further submitted that as regards the connected appeal (ITA No. 705/2007) in respect of

the Assessment Year 2000-01 it stood on a different footing since the interest earned on the RBI bonds was not relatable to the said assessment year.

7. We are unable to agree with the submissions advanced made by learned counsel for the Revenue. We find that as regards the interest on the RBI bonds, this was part of the total settlement package by which the Assessee was to

receive Rs.54.93 crores for the works undertaken in Iraq as a sub-contractor of the IRCON. In the facts and circumstances of the case, it is not possible to view the interest received on the RBI bonds as payment de hors the activity of the Assessee pursuant to the execution of the contract. We do not find any error in the orders of the CIT (A) as well as the Tribunal warranting any interference. No substantial question of law arises on this issue.

8. As regards the payment received on account of transportation charges, the Tribunal has, in our view, rightly observed that the Assessee is transporting sleepers only to the railways at different sites and to no other entity. We are agree with the view expressed by the CIT(A), concurred with by the Tribunal, that business of the Assessee included not only manufacturing but all incidental activities undertaken till the delivery of the manufactured goods was effected. The benefit of the deduction to the Assessee in terms of Section 80-IA of the

Act cannot be denied since the receipts on account of transportation is a part of its business receipts. No substantial question of law arises in this regard either.

9. As regards the connected appeal (ITA No. 705 of 2007) for the Assessment

Year 2000-01, we find that in para 6 of the order dated 19th January, 2007 it has been observed by the Tribunal that there is no dispute that facts of the

case in the year under consideration are identical with the facts of the Assessment Year 1997-98. In that view of the matter, it is not possible to accept the submissions made by learned counsel for the Revenue that the facts of

the Assessment Year 2000-01 stood on different footing warranting a different treatment.

10. For the aforementioned reasons, there is no merit in these appeals and they are dismissed as such.

MADAN B. LOKUR, J

**S.
MURALIDHAR, J
DECEMBER 04, 2007
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