

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR

J U D G M E N T

D.B. INCOME TAX APPEAL NO.210/2012

Commissioner of Income Tax-I

Vs.

M/s Sagun Gems Pvt. Ltd.

Date of Judgment: August 22, 2012

PRESENT

HON'BLE THE CHIEF JUSTICE MR. ARUN MISHRA

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-I

Mr. J.K. Singhi, Sr. Counsel assisted by Mr.
O.P. Pareek, for the appellant

BY THE COURT(Per Jain J.)

Heard learned counsel for the
appellant.

2 This income tax appeal is directed
against order dated 20th January, 2012 passed
by Income Tax Appellate Tribunal, Jaipur Bench
'A', Jaipur, whereby, appeal preferred by
revenue/appellant, against order of
Commissioner of Income Tax (Appeals), has been
dismissed.

3. Brief facts of the case are that
respondent/assessee was engaged in the business
of manufacturing and export of gems and silver
jeweleries. The assessee claimed deduction
under Section 10-A of the Income Tax Act, which

was disallowed by Assessing Officer. Commissioner of Income Tax (Appeals), on an appeal preferred on behalf of assessee, allowed the exemption, claimed by the assessee and set aside the order of Assessing Officer. Thereafter, Department preferred an appeal before the Tribunal, which has been dismissed. Thereafter, Department has preferred this appeal.

4. Submission of learned counsel for the appellant is that Assessing Officer rightly disallowed the claim of exemption made by assessee. The Commissioner of Income Tax (Appeals) as well as Income Tax Appellate Tribunal both committed an illegality in setting the order of Assessing Officer.

5. We have considered submissions of learned counsel for the appellant and examined the impugned order of Tribunal as well as orders passed by Commissioner of Income Tax (Appeals) and also the Assessing Officer.

6. The Commissioner of Income Tax (Appeals) has considered all the factual aspects of the matter and recorded a finding that it has been brought on record that Shri Pitambar Sharma did not divert the funds from his existing concern to the new company but invested in share capital of M/s Shagun Gems Pvt. Ltd. from realization of his assets other

than the capital employed in the firm. Commissioner of Income Tax (Appeals) also came to a conclusion that from the bills it is clear that the new plant and machinery was purchased by the concern and further that out of 70 employees in the new concern, only 8 were from the earlier concern. The finding of the Commissioner of Income Tax (Appeals) was quoted in Para 5 of the impugned order by the Tribunal, which is again reproduced here for ready reference:-

"I have carefully perused the order of the AO and the submissions of the AR. On verification of the facts as submitted by the AR and law as per the judicial pronouncements relied on by him I concur with the submissions of the AR that the claim of exemption u/s 10A was correctly made by the assessee. First of all, it has been brought on record that Shri Pitambar Sharma did not divert the funds from his existing concern to the new company but invested share capital of M/s Shagun Gems Pvt. Ltd. from realization of his assets other than the capital employed in the firm. Secondly, it is clear from the bills submitted that the new plant & machinery was purchased by the concern. Thirdly, out of 70 employees in the new concern, only 8 were from the earlier concern. In view of the above facts, it cannot be concluded that the new company i.e. M/s Shagun Gems Pvt. Ltd. is nothing but reconstruction of old business within the meaning of provisions of section 10A(2)(ii). On the basis of these facts and judicial pronouncements relevant to these facts, the exemption claimed by the assessee u/s 10A of Rs. 94,84,191/- is directed to be allowed."

7. The above factual aspects and submissions of both the parties were considered by Tribunal in detail and Tribunal also recorded a finding that there is no reason to hold that assessee company is nothing but restructured company of earlier company and is not entitled for exemption. Para 9 of the order of the Tribunal is also reproduced as under:-

"9. After considering the orders of the AO, ld. CIT (A) and submissions of both the parties, we find no infirmity in the finding of ld. CIT (A) who has examined the issue and then found that the assessee's case does not hit by provisions of section 10A(2)(ii) of the Act and, therefore, assessee is entitled for deduction under section 10A. Various objections raised by AO as mentioned above have been verified by ld. CIT (A) and found that land and building and machineries are new. Capitals introduced by the Directors are from their own sources and not by transferring from M/s. Shagun. Out of 70 employees employed by assessee company, only 8 employees were related to M/s Shagun and this is not a reason that for employing the ex-employees of any other company curtails the benefit allowable to the assessee. If by any reason any employee has left the services of any company and joins a new company it does not hold that a new company is a restructured company of the earlier company from where the employee has left the services. There is no bar to sale the goods to the customers which were purchasing the goods from other entity i.e. M/s. Shagun. The assessee company is an independent unit doing its own activity of manufacturing and thereafter the material has been sold on the basis of market price. Therefore, there is no reason to hold that assessee company is a restructured company of earlier and hit by provisions of section 10A(2)(ii) of the Act. In view of these

facts and circumstances, we hold that ld. CIT (A) was justified in allowing the issue in favour of the assessee. Accordingly, we confirm his order."

8. The finding of Commissioner of Income Tax (Appeals) as well as Tribunal and other facts and circumstances of the present case, narrated and discussed above, make it clear that all these questions are relating to questions of facts and there is a concurrent finding of facts recorded by Commissioner of Income Tax (Appeals) as well as Income Tax Appellate Tribunal. '

9. It is a settled law that income tax appeal can be admitted by this Court only on substantial question of law. This Court cannot interfere in the finding of fact recorded by courts below.

10. Since no substantial questions of law are involved in this appeal, therefore, we are not inclined to admit it and the same is, accordingly dismissed in limine.

(NARENDRA KUMAR JAIN-I), J.

(ARUN MISHRA), CJ.

BKS/-

"All corrections made in the judgment/order have been incorporated in the judgment/order being emailed."

B.K. SHRIVASTAVA
PRIVATE SECRETARY