

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN
and
The Honourable Mr.Justice K.RAVICHANDRABAABU

TC(A). No.1751 of 2006

Commissioner of Income Tax
Madurai

... Appellant

-vs-

First Garments Manufacturing Co. India (P) Ltd
4/135, Aruppukottai Main Road
Valayankulam
Madurai 625 001

... Respondent

Tax Case Appeal against the order of the Income Tax Appellate Tribunal, 'SMC III (C)'
Bench, Chennai, dated 24.11.2005 passed in I.T.A.No.547/Mds/ 2002 for assessment year
2001-02.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.N.Muthukumar
for Dr.Anita Sumanth

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

The Revenue has filed the above appeal as against the order of the Income Tax Appellate Tribunal for the assessment year 2000-01. The above appeal was admitted on the following substantial questions of law:-

"(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for the benefit of Section 10B in respect of contract receipts of stitching charges?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that contract receipts for stitching charges should be treated as domestic sales for the purpose of Section 10B? "

2. The assessee is engaged in the business of purchase of textile material, stitching and exporting garments. Apart from the export receipts, the assessee is stated to have received a sum of Rs.72,67,460/- by way of stitching charges, for which the assessee called it as sub contract receipts. The assessee submitted that whenever the stitching machines of the assessee were relatively free, the same were utilized for the purpose of undertaking job work for outsiders. The Assessing Officer pointed out that the interest receipts of Rs.5,39,897/- and sub contract receipts of Rs.72,67,460/- were not entitled to be considered under Section 10B of the Act for the purpose of granting exemption. These items were assessable under the head of 'other sources'. The assessment was completed applying the second proviso to Sub Section (1) to Section 10B of the Act. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) viewed that so long as the domestic sale is less than 25% of the total sales, the assessee is entitled for exemption under Section 10B of the Act and thus, accepting the case of the assessee that the stitching charges received was less than 25%, held that the assessee is entitled to exemption under Section 10B of the Act. Aggrieved by the same, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal viewed that sub contract receipts and stitching charges were less than 25% of the total sales and hence, the assessee was entitled to the exemption under Section 10B of the Act. Aggrieved by this, the Revenue has filed the above appeal before this Court.

3. Learned standing counsel for the Revenue pointed out that the second proviso to sub section (1) to Section 10B speaks about the deeming fiction on profits and gains derived from the domestic sales as export of articles or things. In the case of export company, so long as the profits and gains relating to such domestic sales or things did not exceed 25% of the total sales, the profits and gains would qualify as profits and gains derived from the export of articles or things. He pointed out that when the proviso speaks about the sales alone and not the turnover, in contra distinction to sub section 4, which speaks about a formula adopting the properties of the export turnover to the total turnover of the business to find out the profits derived from export of articles or thing, the Tribunal committed a serious error in construing the sub contract receipts which admittedly is not a sale for the purpose of qualifying for exemption under second proviso to Section 10B(1) of the Act. He further pointed out that the assessee did not deny as a matter of fact that the machines which were lying idle were used for stitching for other parties.

4. Per contra, the assessee pointed out that the assessee had used the machines for the purpose of stitching the materials for others and when the said turnover is less than 25% of the total sales, rightly the authorities upheld the contention of the assessee to grant the relief under Section 10B(1).

5. Heard learned standing counsel for the Revenue as well as learned counsel for the assessee and perused the materials on record.

6. Before going into the merits of the case, Section 10B(1) and First and Second proviso to Section 10B(1) and sub section 4 to Section 10B as it stood during the assessment year 2001-02 herein has to be seen, which reads as under:-

10B(1) Special provisions in respect of newly established hundred per cent export oriented undertakings - Subject to the provisions of this Section, a deduction of such profits and gains as are derived by a hundred per cent export oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee;

Provided that where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years:

"Provided further that the profits and gains derived from such domestic sales of articles or things or computer software as do not exceed twenty-five per cent of the total sales shall be deemed to be the profits and gains derived from the export of articles or things or computer software.

Provided also that no

"10B(4) For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee. "

Explanation 2 to Section 10B(9)(iii) defines "export turnover", which reads as under:-

"export turnover" means the consideration in respect of export of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange in accordance with sub-section (3), but does not include freight, tele-communication charges or insurance attributable to the delivery of the articles or things or computer software outside India or expenses, if any, incurred in foreign exchange in providing the technical services outside India".

7. Section 10B as it stood originally prior to the amendment under the Finance Act 2000 with effect from 1.4.2001, provided for 100% exemption to 100% E.O.U as by way of tax holiday

in respect of profits and gains derived from the export of articles or things for the full period of any five consecutive assessment years falling within a period of eight years. For this purpose, the assessee has to disclose the option and furnish a declaration to that end. As long as domestic sales of 100% EOU were within the reasonable limits, 100% EOU were granted full tax holiday. However, when it was found that the 100% EOU had less than 75% of their turnover as export sales and nevertheless enjoyed 100% exemption, Section 10B was amended that 100% EOU would be entitled to the tax holiday as by way of deduction provided 75% of the turnover related to export of articles or things. Thus, units which had export less than 75% of their turnover, were not however entitled to 100% exemption. Thus, Section 10B was substituted by Finance Act 2000 with substantial changes with effect from 1.4.2001. From total exemption Section 10B stood amended as a deduction provision. When the profit from domestic sale is less than 25% of the local sales, domestic sales are deemed as part of export turnover.

8. A reading of second proviso to section 10B of the Act thus clearly shows what is contemplated as deemed profits and gains derived from the export of articles or things for the purpose of Section 10B(1) of the Act. Thus, whenever local sales of articles or things does not exceed 25% of the total sale, then the profits and gains derived from the such domestic sales are considered as deemed profits and gains derived from the export of articles or things qualifying for deduction. Anything beyond 25% of the total sales, thus disentitles the assessee from claiming the benefit of 100% deduction under Section 10B(1) of the Act. Wherever such turnover exceeded 25% as spoken to by second proviso to section 10B(1) for the purpose of considering deduction on the profits derived from the export of articles or things, sub section (4) of Section 10B(1) prescribed the formula to be adopted. The profits derived from the export of articles shall be calculated by taking the export turnover in respect of articles or things in proportion to total turnover of the business carried on by the assessee. As already seen, the Section defines the "export turnover". Thus, the total turnover carried on by the assessee need not necessarily be confined to export sales or local sales, but would also include the job work done by the assessee. Thus, when the legislature had chosen distinct phraseology for the purpose of deeming a particular income viz., the profits and gains derived from the domestic sale, on the profits and gains derived from export of articles under the second provision to Section 10B(1), in providing the formula, given the fact that the distinction was in the consideration of the relief under Section 10B is maintained as per second proviso and sub section (4), we agree with the submission made by learned standing counsel for the assessee that the Tribunal committed serious error in treating the sub contract receipts and stitching charges as amounting to local sales for the purpose of granting 100% exemption to the assessee.

9. In view of the above, the order of the Tribunal is set aside, thereby, the order of the Assessing Officer is restored. The above Tax Case (Appeal) is allowed. No costs.

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To

1. Commissioner of Income Tax, Madurai
2. The Income Tax Appellate Tribunal, SMC-III (C) Bench,
Chennai