



IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 18TH DAY OF JULY 2012

PRESENT

HON' BLE MR. JUSTICE K.SREEDHAR RAO

AND

HON' BLE MR. JUSTICE B.MANO HAR

INCOME TAX APPEAL NO.149 OF 2012

CONNECTED WITH

INCOME TAX APPEAL NO.1043 OF 2008

INCOME TAX APPEAL NO.1042 OF 2008

INCOME TAX APPEAL NO.148 OF 2012

BETWEEN:

1. The Commissioner of Income tax
C.R. Building,
Queens Road,
Bangalore

2. The Asst. Commissioner of Income tax
Circle-11(4),
C.R. Building,
Queens Road,
Bangalore

... Common Appellants

(By Shri. K.V. Aravind, Adv.)

AND :

M/s. ITC Filtrona Limited
Doddajala Post,
Yarthiganahalli, (via),
Bettahalasur,
Bangalore – 560 057
(By Smt.Vani.H. Adv.)

...Common Respondent

ITA No.149/2012 is filed under Section - 260-A of I.T. Act, 1961 arising out of order dated 29.12.2011 passed in I.T.A. No.152/Bang/2011 for the Assessment year 2002-2003, praying that this Hon'ble Court may be pleased to:

- (i) formulate the substantial question of law stated therein,
- (ii) allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA No.152/Bang/2011, dated 29.12.2011 and confirm the order of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income tax, Circle-11(4), Bangalore, in the interest of justice and equity.

ITA No.1043/2008 is filed under Section. 260-A of I.T. Act, 1961 arising out of order dated 06.06.2008 passed in I.T.A. No.1193/Bang/2007, for the Assessment year 2003-04, praying that this Hon'ble Court may be pleased to:

- (i) formulate the substantial questions of law stated therein,
- (ii) allow the appeal and set aside the orders passed by the ITAT, Bangalore in ITA No.1193/Bang/2007, dated 06.06.2008 confirm the orders of the Assistant Commissioner of Income tax, Circle-11(5), Bangalore, in the interest of justice and equity.

ITA No.1042/2008 is filed under Section - 260-A of I.T. Act, 1961 arising out of order dated 06.06.2008 passed in I.T.A. No.1199/BNG/2007, for the Assessment year 2004-05, praying that this Hon'ble Court may be pleased to:

- (i) formulate the substantial questions of law stated therein,
- (ii) allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA No.1199/BNG/2007, dated 06.06.2008 confirm the orders of the Appellate Commissioner and confirm the order passed by the Deputy Commissioner of Income tax, Circle-11(4), Bangalore, in the interest of justice and equity.

ITA No.148/2012 is filed under Section - 260-A of I.T. Act, 1961 arising out of order dated 29.12.2011 passed in I.T.A. No.136/BNG/2011, for the Assessment year 2002-2003, praying that this Hon'ble Court may be pleased to:

- (i) formulate the substantial questions of law stated therein,
- (ii) allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA No.136/Bang/2011, dated 29.12.2011 confirming the order of the Appellate Commissioner and confirm the order passed by the Deputy Commissioner of Income tax, Circle-11(4), Bangalore, in the interest of justice and equity.

These appeals coming on for Final Hearing this day K.SREEDHAR RAO, J., delivered the following:

J U D G M E N T

In all four appeals, the appellant and respondent are the same. The appellant in all four appeals is the State. The Commissioner of Income tax (Administration) (for short 'CIT(A)') and the Assistant Commissioner of Income tax, Circle - 2(V), Queens Road, Bangalore have filed these appeals against the order of the Appellate Tribunal.

2. The assessee is a manufacturer of cigarette filter rods, which is used in manufacture of filter cigarette. The assessee claimed exemption of profits earned from the sale of the above, vide Section -80-IB for the assessment years 2003-04 and 2004-05.

3. The Assessing Officer found that the cigarette filter rods are used in the manufacture of the cigarette. The provisions of sub-section – (2), clause (iii) of Section – 80-IB read with item – 2 of IX Schedule discloses that – “tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, bidis, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff” are not entitled for exemption. The cigarette filter rods are basically used for manufacture of cigarettes. Therefore, would not be entitled for exemption.

4. The following question of law was formulated for consideration:

“Whether the Tribunal was correct in holding that cigarette filters / filter rods used in manufacture of cigarettes and which are inseparable and have no other use cannot form part of item no.2 to the IX schedule to the Act and therefore deduction under Section – 80IB of the Act is allowable?”

5. It was contended before the CIT (Appeals), that the filter rods are not exclusively used for manufacture of cigarettes, but it is used for inhalers also. The said contention was taken for the assessment year 2002-2003. The CIT partially upheld the contention and granted exemption to an extent of 25% and directed 75% of the profits to be taxable for the assessment years 2003-04 and

2004-05. Full exemption is granted in the appeal. The Revenue aggrieved by the said order filed an appeal before the Tribunal. The appeal was dismissed upholding the decision of the CIT(Appeals). The Revenue aggrieved by the said order has filed these appeals for the above assessment period.

6. The provisions of sub-section – (2)(iii) of Section 80-

IB reads thus –

“(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list of the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India:

Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words “not being any article or thing specified in the list of Eleventh Schedule” had been omitted.”

7. The provision of item - (2) of the IX Schedule is extracted supra. A combined reading of the said provisions would make the exemption inapplicable only to the items mentioned in clause – (2) of the IX Schedule. The ancillary products used for manufacturing of cigarettes, which are not tobacco or tobacco content are not mentioned in the Schedule. It may be noted that cigarette filters are used for manufacture of filter cigarettes. The purpose for which the

product is ultimately used would be relevant. While interpreting the fiscal statute, the provisions of law have to be strictly interpreted. When item (2) of IX Schedule does not include the ancillary products necessary for manufacturing of cigarettes, it is impermissible by liberal interpretation to include cigarette filters and to deny the benefit of exemption. In that view, the question of law framed is answered against the Revenue.

The appeals are dismissed.

(K.SREEDHAR RAO)
JUDGE

(B.MANO HAR)
JUDGE

JJ*

KSRJ & BMJ:
03.09.2012

I.T.A.Nos.149/2012,
c/w. I.T.A.Nos.1042 & 1043/2012
and I.T.A.No.148/2012

Orders on 'Being Spoken to'

Counsel for the appellant submits that in I.T.A.Nos.1042 & 1043/2008, there is another additional 2nd question of law framed which is as follows:-

“Whether the Appellate Authority was correct in holding that deduction U/s.80HHC of the Act has to be allowed without reducing the deduction granted U/s.80IB of the Act?

Insofar as this question of law is concerned, in I.T.A.No.674/2007 dated 03.02.2011 the question is answered against the revenue. Therefore, in these appeals also the said question of law is answered against the revenue.

Sd/-
JUDGE

Sd/-
JUDGE

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