

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

ITA NO. 435 OF 2009

C/W

ITA NO.69 OF 2014

IN ITA NO.435/2009

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C.R. BUILDING, QUEENS ROAD,
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME TAX,
CIRCLE -11(5), C.R. BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI.K V ARAVIND, ADVOCATE A/W
SRI.DILIP, ADVOCATE)

AND:

M/S ENDEKA CERAMICS (INDIA) PVT.LTD.,
FORMERLY KNOWN AS JOHNSON MATHEY
CERAMICS INDIA LTD.,
C/O GOWTHAMA & CO.,
NO.23/57, 41ST CROSS,

EAST C MAIN ROAD, 9TH BLOCK,
JAYANAGAR, BANGALORE-560069

...RESPONDENT

(BY DR.C.P.RAMASWAMY & SRI.BALARAM.R.RAO,
ADVOCATES)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT BANGALORE IN ITA NO.24/BANG/2009, DATED 09.04.2009 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-11(5), BANGALORE IN THE INTEREST OF JUSTICE AND EQUITY.

IN ITA NO.69/2014
BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING, QUEENS ROAD,
BANGALORE.
2. THE ASSISTANT COMMISSIONER OF
INCOME TAX, CIRCLE-11(3),
RASHTROTHANA BHAVAN,
NRUPATHUNGA ROAD,
BANGALORE-560001.

...APPELLANTS

(BY SRI.K V ARAVIND, A/W SRI.DILIP, ADVOCATES)

AND:

M/S ENDEKA CERAMICS PVT. LTD.
(FORMERLY JOHNSON MATHEY
CERAMICS INDIA LTD.),
23/57, 4TH CROSS,
EAST END C MAIN ROAD,
9TH BLOCK, JAYANAGAR,
BANGALORE-560069.

...RESPONDENT

(BY DR.C.P.RAMASWAMY, ADVOCATE A/W
SRI.BALARAM R RAO, ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T.
ACT, 1961 PRAYING TO FORMULATE THE
SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE
AND ALLOW THE APPEAL AND SET ASIDE THE ORDER
PASSED BY THE ITAT BANGALORE IN ITA
NO.886/BANG/2009, DATED 30.08.2013 CONFIRMING
THE ORDER OF THE APPELLATE COMMISSIONER AND
CONFIRM THE ORDER PASSED BY THE ASSISTANT
COMMISSIONER OF INCOME TAX, CIRCLE-11(5),
BANGALORE.

THESE APPEALS COMING ON FOR HEARING,
THIS DAY, **ALOK ARADHE J.**, DELIVERED THE
FOLLOWING:

ORDER

Sri. K.V. Aravind, along with Sri. Dilip, Advocates
for Appellants.

Dr. C.P. Ramaswamy and Sri. Balaram. R. Rao,
Advocates for respondent.

In both the appeals, similar issue arises for consideration. ITA No.435/2009 pertains to Assessment Year 2004-2005, whereas ITA No.69/2014 pertains to Assessment Year 2005-2006. The appeals were admitted by a Bench of this Court by order dated 02.01.2020 on the following substantial question of law.

“Whether respondent-assessee was entitled to claim deduction under Section 80IA(2)(iv)(c) of the Income Tax Act, 1961 relying upon the notification bearing No.714E dated 07.10.1997?”

The substantial question of law framed in both the cases are identical.

2. The facts giving rise to filing of these appeals briefly stated are that the assessee is engaged in the business of manufacturing and sale of zirconium silicate, colours and frits for application in tiles and sanitary ware. In respect of Assessment Year 2004-2005, the assessee filed return of income in respect of Assessment Year 2004-2005 and 2005-2006 and claimed deduction

under Section 80IA(2)(iv)(c) of the Act. On 26.12.2006 an order on assessment was passed. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by an order dated 24.11.2014, *inter alia* held that assessee's manufacturing unit was located in a backward area and therefore, the claim under Section 80IA of the Act was made. It was further held that when the Notification came in October 1997 declaring the backward area with effect from 01.10.1994, the assessee's unit did not fall within the backward area. Therefore, the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the revenue as the Assessment Unit did not fall within the backward area for claiming eligible deduction under Section 80IA of the Act. In the result, the claims made under Section 80IA of the Act were disallowed. Being aggrieved, the assessee approached the Income Tax Appellate Tribunal. The Tribunal by order dated 09.04.2009, *inter alia*, held that the declaration of the area for claiming the relief under Section 80IA of the Act was not made under

Notification with retrospective effect, which was not within the knowledge of the assessee. Therefore, assessee is entitled to claim deduction under Section 80IA of the Act. In the aforesaid backdrop these appeals have been filed.

3. The learned counsel for the respondent - assessee inviting the attention of this Court to Section 80-IA(2)(iv)(c) of the Act submitted that in order to claim the benefit of deduction under Section 80IA of the Act, the industry is required to be situated in the backward area which may be specified in the Notification issued by the Central Government and should commence the production during the period from 01st October 1994 till 31st March 1999.

4. In the instant case, admittedly the unit of the assessee is not situated within the backward District as specified in the Official Gazette. Therefore, the Tribunal has grossly erred in setting aside the order passed by the Commissioner of Income Tax (Appeals) and in holding that the assessee is entitled to the benefit of 80IA of the

Act. In support of aforesaid submission, learned counsel for the Revenue has placed reliance on decision of the Hon'ble Supreme Court in '**ACE MULTI AXES SYSTEMS LIMITED**', (2017) 88 TAXMANN.COM 59 (SC).

5. On the other hand, learned counsel for the assessee has submitted that once the area in which the unit of the assessee is situated was declared to be backward area by a Notification issued under Section 80HH (2) of the Act and therefore, the same has to be taken as Industrial Backward Area for the purposes of this Act.

6. Learned counsel for the assessee has also pointed out that he was pushed by the Collector for setting up of Industry in Soolagiri Block of Dharmapuri District in the State of Tamil Nadu and the assessee is entitled to benefit of Notification dated 03rd September 1997, issued under Section 80-IA of the Act, which provides that the retrospective operation of this Notification will not adversely effect any person. Therefore, it is in support of his submission, learned

counsel for the assessee has also placed reliance on decision of the Hon'ble High Court of Rajasthan in '**COMMISSIONER OF INCOME TAX VS. TRINITY HOSPITAL**', (2004) 140 TAXMAN 323 (RAJASTHAN).

7. It is also urged that the appellant-assessee is entitled to parity in the matter of deduction as the area in which the industry is situated, has already been declared to be a backward area under Section 80HH(2) of the Act. It is also urged that though equity and taxation are considered to be strangers but, an attempt should be made to ensure that they do not remain so always and if a construction, which results in equity rather than any injustice, then such construction should be preferred to the literal construction.

8. In support of the aforesaid submission, reliance has been placed on the decision of **Hon'ble** Supreme Court in '**COMMISSIONER OF INCOME TAX VS. J.H. GOTLA**', (1985) 23 TAXMAN 14J (SC).

9. We have considered the submission made on both sides and have perused the records.

10. It is well settled in law that when an exemption is granted with a beneficent object i.e., to encourage production or setting up an industry in backward area in terms of Industrial Policy, the provision relating to exemption has to be liberally construed (see '**STATE OF JHARKHAND VS. TATA CUMINS LTD.,**' (2006) 4 SCC 57). It is equally well settled legal proposition that if the tax payer is within the plain terms of the exemption Notification, he cannot be denied the benefit calling in aid in supposed intention, and the language of the Notification has to be given effect to. (see '**COMMISSIONER OF (C) ITC LTD., COMMISSIONER OF EXCISE, NEW DELHI**', (2004) 7 SCC 591.) It has also been held that if the exemption is available on complying with certain conditions, the aforesaid conditions have to be strictly complied with.

(See '**EAGLE FLASK INDUSTRIES LTD., VS. COMMISSIONER OF CENTRAL EXCISE**', (2004) 7 SCC

377 and '**STATE OF JHARKHAND VS. AMBAY CEMENTS**', (2005) 1 SCC 368.) In '**CCE VS. GINNI FILAMENTS LTD.,**', (2005) 3 SCC 378 it has been held that an exemption Notification has to be read strictly in so-far-as it pertains to eligibility criteria.

11. Bearing in mind the aforesaid well settled legal principles, before proceeding further, it is apposite to take note of Section 80-IA(2)(iv)(c) of the Act, which reads as under:

"80-IA(2)(iv)(c):-In the case of an industrial undertaking located in such industrially backward district as the Central Government may, having regard to the prescribed guidelines, by notification in the Official Gazette, specify in this behalf, as an industrially backward district of Category A or an industrially backward district of Category B, and , it begins to manufacture or produce articles or things or to operate its cold storage plant or plants at any time during the period beginning on the 1st day of October, 1994, and ending on the 31st day of March, 2000;"

12. From the perusal of the aforesaid provision, it is evident that in order to avail benefit of deduction, twin conditions have to be satisfied, namely, that industry should be located in Industrial Backward District as

prescribed by the Central Government vide Notification in the Official Gazette and the aforesaid Industry has to commence the production during the period beginning from 1st October 1994 and ending on 31st March 1999.

13. Admittedly in the instant case, the industrial undertaking of the appellant-assessee is not located in the Industrial Backward District, which has been mentioned in the Notification issued by the Central Government. It is pertinent to note here that the first Notification was issued by the State Government on 03rd September 1997, whereas the second Notification was issued on 07th October 1997. In both the aforesaid Notifications, the District in which the industry of the assessee is located has not been mentioned as Industrially Backward District. It is also not in dispute that the assessee had set up the industry before coming into force of the Industry Notification. Therefore, the condition mentioned in Section 80-IA(2)(iv)(c) of the Act that an industrial undertaking should be located within such Industrial Backward District as the Central

Government vide Notification prescribed has not admittedly been fulfilled by the assessee. In order to claim the deduction, the assessee has to satisfy the requirements mentioned under the provision, which admittedly the assessee does not fulfill. Therefore, the assessee is not entitled to claim deduction under Section 80-IA(2)(iv)(c) is concerned the same is sans substance.

14. It is pertinent to note here that Section 80HH and Section 80-IA(2)(iv)(c) are two different and independent provisions. The decision of Hon'ble Rajasthan High Court relied upon by the learned counsel for the respondent is of no assistance to the assessee in the fact situation of the case as the aforesaid decision was based on the concession that once an area is declared to be Industrially Backward Area under Section 80HH (2) of the Act, the same has to be taken under Industrial Backward Area for the purposes of this Act. In other words, the aforesaid decision is based on the concession and there has been no deduction on the

issue. Therefore, we do not agree with the view taken by the Hon'ble High Court of Rajasthan insofar as it takes a view that once the area declared as backward area under Section 80HH(2) of the Act, the same has to be taken as Industrially Backward Area for the purposes of the Act, as Section 80HH(2) and 80-IA(2)(iv)(c) are separate and independent provisions.

In view of preceding analysis, the impugned order dated 09.04.2009 passed by the Income Tax Appellate Tribunal, Bengaluru is hereby set aside. In the result, the appeals stand allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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