

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF APRIL, 2018

PRESENT

THE HON'BLE MR. JUSTICE B.S. PATIL

AND

THE HON'BLE MR. JUSTICE S. SUNIL DUTT YADAV

ITA No.715/2017 c/w
ITA No.714/2017 & ITA No.716/2017

BETWEEN:

1. THE Pr. COMMISSIONER OF INCOME TAX CIT (A)
CENTRAL CIRCLE,
C.R.BUILDING,
QUEEN'S ROAD,
BENGALURU-560 001
2. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-1(1)
C.R.BUILDING
QUEENS ROAD
BENGALURU-560 001

... APPELLANTS
(COMMON)

(BY SRI ARAVIND K.V, ADVOCATE)

AND:

M/S. LAKSHMINARAYANA MINING COMPANY
NO.100, (OLD NO.33),
SANNIDHI ROAD,
BASAVANAGUDI,
BENGALURU -560 085.
PAN: AAAFL 6249G

... RESPONDENT
(COMMON)

(BY SRI SHESHACHALA, SENIOR COUNSEL FOR
SRI. ARAVIND V CHAVAN, ADVOCATE FOR
RESPONDENTS)

THESE APPEALS ARE FILED UNDER SECTION 260-A
OF INCOME TAX ACT 1961, ARISING OUT OF ORDER
DATED 03.03.2017, PASSED IN ITA NO.380/BANG/2015,
FOR THE ASSESSMENT YEAR-2010-2011, ITA
NO.379/BANG/2015, FOR THE ASSESSMENT YEAR-2009-
2010 AND ITA NO.381/BANG/2015, FOR THE
ASSESSMENT YEAR-2011-2012, RESPECTIVELY PRAYING
THIS HON'BLE COURT TO:

i) FORMULATE THE SUBSTANTIAL QUESTIONS OF
LAW STATED ABOVE.

ii) ALLOW THE APPEALS AND SET ASIDE THE
ORDERS PASSED BY THE INCOME-TAX APPELLATE
TRIBUNAL, BENGALURU IN ITA NOS.380/BANG/2015,
379/BANG/2015 AND 381/BANG/2015, RESPECTIVELY
DATED 03.03.2017 AND CONFIRM THE ORDER OF THE
APPELLATE COMMISSIONER CONFIRMING THE ORDER
PASSED BY THE DEPUTY COMMISSIONER OF INCOME
TAX, CENTRAL CIRCLE-1(1), BENGALURU.

iii) TO PASS SUCH OTHER SUITABLE ORDERS AS
THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE
FACTS AND CIRCUMSTANCES OF THE CASE IN THE
INTEREST OF JUSTICE AND EQUITY.

THESE APPEALS HAVING BEEN HEARD AND
RESERVED ON 15.03.2018 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT, THIS DAY **S. SUNIL
DUTT YADAV, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

The Revenue has filed the present appeals aggrieved by the orders of the Income Tax Appellate Tribunal, Bengaluru Bench, dated 03.03.2017 in ITA.Nos.380/2015, 379/2015 and 381/2015, respectively, allowing the appeals of the assessee and permitting claim of deduction under Section 10B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') holding that mere processing of the iron ore in a plant and machinery located outside the bonded area will not disentitle the assessee from deduction where the iron ore was excavated from the mining area belonging to an export oriented unit. The tribunal further held that as the raw material as well as finished product both belonged to the assessee and was exported by the assessee, it could be said that there was no violation of Section 10B of the Act, disentitling the claim of the benefit of deduction.

2. The facts relevant for the purpose of appreciating the controversy at hand are as follows:

The assessee is a Firm in the business of mining and export of iron ore and was granted a mining lease for an area 105.2 hectares under Mining License 2487 in Siddapura Village, Bellary District. The assessee had entered into an operation and maintenance agreement with M/s. NAPC Limited, which operated the plants and machineries installed in the Export Oriented Unit (hereinafter referred to as 'EOU') and non-EOU both belonging to the assessee-Firm.

3. The EOU had started production on 23.09.2006 and accordingly deduction under Section 10B of the Act on the profits derived from the production of iron ore from the EOU for the assessment years 2009-2010, 2010-2011 and 2011-2012 was claimed. In its returns under Section 139 of the Act, the assessee firm had claimed deduction with respect to the profits

derived from the export of iron ore produced in the EOU as well as non-EOU. This fact came to light to the Revenue during search wherein records revealed that the assessee was also claiming deduction with respect to production at its plant viz., “M/s. SESA Goa Ltd.” (hereinafter referred to as ‘SESA’ plant) which was non-EOU and was out side the EOU bonded area. During an enquiry, consequent to search under Section 132 of the Act and in response to a notice under Section 153A, the assessee undertook to re-compute its deduction under Section 10B of the Act and such Returns being filed and deduction being claimed, the Assessing Officer disallowed the claim for deduction under Section 10B of the Act with respect to production of iron ore said to have been outsourced by the EOU to the non-EOU and restricted the claim to the profits derived by the EOU from its production. The aforesaid appeals came to be filed before the Commissioner of Income Tax (Appeals)-VI, Bangalore, for the assessment years 2009-2010,

2010-2011 and 2011-2012 against the orders of the Assessing Officer. The Appellate Authority confirmed the order of the Assessing Authority observing that the claim for deduction under Section 10B of the Act is not allowable in respect of production of non-EOU and consequently dismissed the appeal.

4. The said appeals were challenged before the Income Tax Appellate Tribunal, Bangalore Bench, where the assessee primarily contended as follows;

- i) As the entire area of 105.22 Hectares in the Mining Licence No.2487 was approved by the concerned authorities while granting approval to the assessee as a EOU, consequently, any export from this area approved as a EOU was eligible for deduction under Section 10B of the Act.
- ii) The relief under Section 10B could not be disallowed or restricted merely on the ground that certain plant and machinery is situated outside the

‘bonded area’ and as the assessee is an exporter and not an importer in terms of the Notification under 54/1997 dated 3.6.1997 issued under Section 25(1) of the Customs Act which provides that custom bonding is required only where imports are contemplated for use in manufacturing/production of goods for export.

- iii) The export of iron ore which was mined and excavated in an area within the legal possession of a EOU but processed through a non-EOU unit would not contravene any of the conditions under Section 10B, disentitling deduction.

5. The Tribunal, on hearing the rival contentions has observed that the only controversy was with respect to the processing of iron ore which was done by the ‘SESA plant’ situated outside the bonded area. The Tribunal held that custom bonding was not a condition

precedent for granting exemption under Section 10B of the Act and allowed the appeals which has been challenged in the present appeals by the Revenue.

6. In the present appeals, primary contention advanced by the Revenue is to the effect that profits that have been derived by the assessee must be pursuant to excavation and processing activity of the assessee in a custom bonded area. It is further contended that as the 'production' has not been carried out in the EOU Unit, contribution to the finished product by the assessee being almost absent, deduction under Section 10B of the Income Tax Act, 1961 cannot be permitted.

7. In so far as factual aspects are concerned the authorities have clearly held that there has been outsourcing of processing of iron ore to evidence which the profit and loss Account and the Ledger account for

the relevant year have been relied upon. The assertions to the contrary by the Revenue warrants no acceptance.

8. As regards the contention that the processing by 'SESA plant' which is a plant situated outside the customs bonded area and disentitles the assessee from claiming deduction under Section 10 B is concerned, the same can be answered as follows:

(a) the processing of the iron ore in a plant belonging to the assessee being in the nature of job work is not prohibited and forms an integral part of the activity of the EOU;

(b) The mere fact that the 'SESA Plant' is situated outside the bonded area is of no legal significance as the benefit of customs bonding is only for the limited purpose of granting benefit as regards customs and excise duty. The entitlement of deduction under the Income Tax Act is to be looked into independently and

said benefit would stand or fall on the applicability of section 10 B of the Act.

9. The judgment in the case of **Commissioner of Income Tax Vs. Caritor (India) Pvt. Ltd.** reported in **(2014) 369 ITR 463** though arises in the context of deduction under Section 10A of the Act which is different from deduction under Section 10B in so far as Section 10A provides for the location of the unit in the 'Special Economic Zone' [see 10A 2(c)] such locational restriction is absent in case of Section 10B, however the principle that benefit of customs and excise duty is independent of the entitlement of deduction under the Income Tax Act is applicable in the present case also. From the discussion above, we hold that no substantial question of law arises for consideration.

Hence, in our view, mere location of the 'SESA Plant' outside the EOU and customs bonded area is not

a disqualification to claim deduction under Section 10B of the Act.

In view of the above, we find no merit in the appeal.

Accordingly, the appeals are dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

mv/RS/*