IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1025 of 2017

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PRINCIPAL COMMISSIONER OF INCOME TAX-4....Appellant(s)

Versus

M/S SAHJANAND LASER TECHNOLOGY LTD.....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 29/01/2018

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. In this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), the appellant-revenue has challenged the order dated 22.3.2016 made by the Income Tax Appellate Tribunal, Ahmedabad Bench “D” (hereinafter referred to as “the Tribunal”) in ITA No.3342/Ahd/2010, by proposing the following two questions, stated to be substantial questions of law:

> *[A]“Whether the Appellate Tribunal has substantially erred in law and on facts in allowing claim for deduction u/s 10A of the Income Tax Act?”*

> *[B]“Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the disallowance*

of Interest expenses of Rs.15,21,790/-"

2. The assessment year is 2007-08 and the corresponding accounting period is the previous year 2006-07.

3. The assessee company which is located in the SEZ, is engaged in the business of manufacturing of laser system for material processing. The assessee filed its return of income for assessment year 2007-08 on 30.10.2007 declaring total income of Rs.1,47,41,231/-. The assessment came to be framed under section 143(3) of the Act by an order dated 30.12.2009 determining total income at Rs.8,27,83,400/-. In the assessment order, the Assessing Officer, *inter alia*, disallowed a claim of deduction of Rs.5,30,76,095/- under section 10A of the Act as well as interest expenses of Rs.15,21,790/-. The assessee carried the matter in appeal before the Commissioner (Appeals) who deleted the disallowance. The revenue went in appeal before the Tribunal who confirmed the order passed by the Commissioner (Appeals).

4. Insofar as the proposed question [A] which relates to allowing claim for deduction under section 10A of the Act is concerned, the assessee had claimed deduction of Rs.5,82,65,233/- under section 10A of the Act against the sale invoices as under:

(i)	Sales against EPCG	Rs.26.65 crore
(ii)	Sales within Zone	Rs.22.99 lakh
(iii)	Sales to EOU	Rs.22.99 lakh

(iv) Sales (100% Export) Rs. 3.74 crore

5. The Assessing Officer, being of the opinion that the conditions for claiming deduction under section 10A of the Act were not fulfilled by the assessee inasmuch as the assessee had failed to submit the auditor’s certificate required for claiming deduction as per sub-section (5) of section 10A of the Act as well as certificate regarding establishment in SEZ from competent authorities and that there were certain discrepancies in the sales invoices raised against the Bank Realisation Certificates (BRCs), disallowed the claim amount of Rs.5,82,65,233/- under section 10A of the Act. While disallowing the aforesaid amount, the Assessing Officer further found that the assessee had failed to submit the working of exemption under section 10A and the expenses incurred on freight and telecommunication which were to be excluded in calculating the export turnover while computing the claim of exemption and also did not submit partial proof regarding sales invoices raised against bank realization certificate. It appears that during the course of assessment proceedings, the assessee had not submitted any evidence in support of its claim for deduction under section 10A of the Act, despite reasonable opportunity having been granted by the Assessing Officer.

6. Before the Commissioner (Appeals), the assessee submitted additional evidence, in response to which, he called for a remand report from the Assessing Officer. After considering the additional evidence, the Commissioner (Appeals) allowed the claim under section 10A of the Act to

the extent of Rs.5,30,76,095/-. The Tribunal, in the impugned order, has concurred with the findings recorded by the Commissioner (Appeals).

7. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant, assailed the impugned order on the reasoning adopted by the Assessing Officer in the assessment order. It was submitted that during the course of assessment proceedings, the assessee had not produced any evidence in support of its claim under section 10A of the Act and that the Tribunal was not justified in allowing the deduction.

8. As can be seen from the order passed by the Commissioner (Appeals), before him, the assessee had submitted that it could not produce the necessary evidence in support of its claim on account of the ill-health of two of its main persons. It was further submitted by the assessee was in possession of Form No.56F, which is a statutory requirement under the provisions of the Act and was also in possession of Bank Realisation Certificates, which clearly evidence that the amount was received in convertible foreign exchange within the time limit as prescribed. To substantiate its claim, the assessee also produced few of the Bank Realization Certificates and Form No.56F. The Commissioner (Appeals) after considering the remand report submitted by the Assessing Officer and the comments of the assessee on the remand report, found that an amount of Rs.1,75,93,582/- was not received within the period of six months as stipulated in the section. Further, Rs.91,75,435/- on account of sales within zone, sales to EOU and sales of 100% export were not received in time. Thus, a total amount of Rs.2,67,68,997/- was

not received by the company within the statutory time limit as prescribed under the Act and accordingly, was of the view that the deduction claimed by the assessee under section 10 should be revised proportionately. The assessee furnished the working to the Commissioner (Appeals) as per which, on the amount of Rs.30,05,70,495/-, if the claim amount was Rs.5,82,65,233/-, then on Rs.2,67,68,997/-, the proportionate disallowance came to Rs.51,89,138/-. The Commissioner (Appeals), accordingly, restricted the claim under section 10A of the Act to Rs.5,30,76,095/- and not Rs.5,82,65,233/- as claimed by the assessee and allowed the appeal to that extent. The Tribunal, after appreciating the material on record, has concurred with the findings of fact recorded by the Commissioner (Appeals).

9. Thus, the conclusion arrived at by the Tribunal regarding the claim of the assessee under section 10A of the Act is based upon concurrent findings of fact recorded by it after appreciating the material on record. Under the circumstances, the said ground of appeal being based purely upon the findings of fact recorded after appreciation of the evidence on record, in the absence of any perversity being pointed out in the impugned order, does not give rise to any question of law.

10. As regards proposed question (B), which relates to deletion of disallowance of interest expenses of Rs.15,21,790/-, the assessee had paid interest of Rs.68,94,829/- to the banking institutions and others as against Rs.69,88,315/- in the preceding year. On verification, the Assessing Officer noticed that the assessee had given interest-free loans and advances to the tune of

Rs.1,26,80,993/- to seven parties as detailed in the order. The Assessing Officer noted that out of the total loan advances of Rs.2,67,68,997/-, an amount of Rs.1,26,80,993/- was advanced to several parties as mentioned therein without charging interest from them despite the fact that the assessee company had paid substantial interest to the bank and others totalling to Rs.68,94,829/-. He, accordingly, called upon the assessee to give an explanation with regard to non-charging of interest on advances made, in response to which the assessee company said that the advances had been made during the course of business and that it had surplus funds in the form of share capital / reserve surplus and therefore, the assessee company did not charge any interest on such advances. The Assessing Officer did not accept the explanation of the assessee and disallowed the interest expenses of Rs.15,21,719/- being 12% of Rs.1,26,80,993/- advanced to the said parties.

11. The assessee carried the matter in appeal before the Commissioner (Appeals) who deleted the disallowance made by the Assessing Officer. Revenue failed in its appeal before the Tribunal.

12. Mrs. Mauna Bhatt, learned senior standing counsel submitted that the order passed by the Tribunal is erroneous because the assessee company had paid substantial interest to banking and financial institutions and others and if such surplus fund was available with the assessee company, there was no need for it to retain bulk bank loans and payment of substantial amount of interest to banking institutions and others. It was submitted that the assessee could not prove the nexus between surplus funds available and the loans and

advances given by it and that in the absence of any such co-relation, the Tribunal was not justified in upholding the order of the Commissioner (Appeals) deleting the disallowance.

13. A perusal of the order passed by the Commissioner (Appeals) reveals that upon considering the material on record, he has found that the assessee paid interest on borrowed funds and also advanced loans, but did not charge any interest on that because it was business/commercial necessity to take and give the loan simultaneously for business purpose. The Commissioner (Appeals) noted that the assessee had more funds than the amount of advance given without interest and it did not cause any adverse effect on the business prudence and accordingly, deleted the disallowance made by the Assessing Officer. The Tribunal, in the impugned order, has concurred with the findings recorded by the Commissioner (Appeals).

14. From the facts as emerging from the record, it is evident that while the assessee has paid interest on the loans taken from banking and other institutions, it had sufficient surplus funds of its own, out of which it had given interest-free loans and advances to the tune of Rs.1,26,80,993/- to seven parties. The breakup of the funds available with the assessee has been furnished before the Commissioner (Appeals) by the assessee. A perusal thereof clearly reveals that the assessee had obtained secured loans of Rs.2,20,80,792/-, whereas it had reserve surplus of Rs.9,63,57,283/-, share capital of Rs.10,30,45,000/- and share application money of Rs.2,17,75,000/-. Thus, the assessee had considerable surplus funds in proportion to the secured loans. Under the

circumstances, since the assessee had advanced interest-free loans out of its surplus funds, the question of disallowing the expenditure in respect of interest incurred on the borrowed funds did not arise, inasmuch as, no part of the borrowed funds had been advanced by the assessee to the concerned parties. Under the circumstances, the Tribunal was wholly justified in upholding the deletion of disallowance of interest expenses of Rs.15,21,790/-.

15. In the light of the above discussion, it cannot be said that the impugned order passed by the Tribunal suffers from any infirmity so as to give rise to any question of law, much less, a substantial question of law warranting interference. The appeal, therefore, fails and is, accordingly, dismissed.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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