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ITEM NO.3 COURT NO.1 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12756/2008

(From the judgement and order dated 04/07/2007 in TCA No.980/2007 of The HIGH COURT OF MADRAS)

M/S INDIA COMNET INTERNATIONAL Petitioner(s)

VERSUS

INCOME-TAX OFFICER Respondent(s)

(With prayer for interim relief and office report)
[For Final Disposal]

With S.L.P. (C) Nos.29826-29829 of 2008
(With office report)
[For Final Disposal]

S.L.P. (C) No.949 of 2009
(With prayer for interim relief and office report)

Date: 06/09/2012 These Petitions were called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. Ramesh Singh,Adv.
Ms. Surekha Raman,Adv.
Ms. Namrata Sood,Adv.
Mr. Anuj Sarma,Adv.
for M/s. K.J. John & Co.,Advs.

For Respondent(s) Mr. Rupesh Kumar,Adv.
Mr. Arijit Prasad,Adv.
Mr. S.W.A. Qadri,Adv.
Ms. Anil Katiyar,Adv.
for Mr. B.V. Balaram Das,Adv.

...2/-

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

Leave granted.

The civil appeals filed by the assessee are allowed with no order as to costs.

[T.I. Rajput]
A.R.-cum-P.S.

[Indu Satija]
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6364 OF 2012
(Arising out of S.L.P. (C) No.12756 of 2008)

M/s. India Comnet International ...Appellant(s)

Versus

Income Tax Officer, Chennai ...Respondent(s)

With Civil Appeal Nos.6365-6368/2012 @ S.L.P. (C) Nos. 29826-29829/2008 and Civil Appeal Nos.6369/2012 @ S.L.P. (C) No.949/2009

O R D E R

Heard learned counsel on both sides.

Leave granted in this batch of three cases.

In civil appeal arising out of S.L.P. (C) No.12756 of 2008, the facts are as under:

The assessee is a 100% Export Oriented Unit, which develops and exports software. It earns foreign exchange. It has earned interest income amounting to Rs.92,06,602/- on Foreign Currency Deposit Account permitted by FERA under Banking Regulations. The assessee was asked to explain why the said sum should not be assessed under the Head 'Other Sources' in Section 56 of the Income Tax Act, 1961 ['Act', for short]. This query was raised because, in its Return of Income, the assessee claimed exemption in respect of the said amount of Rs.92,06,602/- under Section 10A of the Act. The assessee has lost throughout in the proceedings.

...2/-

The impugned judgment of the High Court is based on the judgment of the Madras High Court in the case of Commissioner of Income Tax vs. Menon Impex Private Limited, [2003] 259 I.T.R. 403, wherein a similar question arose as to "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest income derived by the assessee from funds in connection with Letter of Credit is income derived from the profits of business of the industrial undertaking so as to be entitled to get the benefit of Section 10A of the Income Tax Act, 1961?" In that case, the Madras High Court examined in detail the transaction in question and found that the assessee had set up a new industrial undertaking in Kandla Free Trade zone for manufacturing light engineering goods. The goods therein were exported during the Assessment Year 1985-1986. In the course of business, the assessee was required to open a Letter of Credit. On such Deposit, the assessee earned interest. Under the said circumstances, the High Court held, following the judgment of this Court in the case of Commissioner of Income Tax vs. Sterling Foods, reported in [1999] 237 I.T.R. 579, that the interest received by the assessee was on deposit made by it in the Banks; that such deposit was the source of income; and that, the mere fact that the deposit was made for obtaining Letter of Credit which Letter was, in turn, used for the purpose of business undertaking did not establish a direct nexus between the interest and industrial undertaking. Thus, the judgment of the Madras High Court in Menon Impex Private Limited [supra] was based on the examination of the transaction in detail which exercise has not been undertaken in the present case.

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For the above reasons, we set aside the impugned judgment and remit the cases to the Income Tax Appellate Tribunal [‘ITAT’, for short] for deciding the matter afresh after examining the transaction in question, as done by the Madras High Court in the case of Menon Impex Private Limited [supra].

Needless to state that ITAT will give an opportunity to the assessee to produce relevant documents in support of the transaction in question before deciding the question on law.

Accordingly, the civil appeals filed by the assessee stand allowed with no order as to costs.

........................CJI.
[S.H. KAPADIA]

..........................J.
[MADAN B. LOKUR]

New Delhi,
September 06, 2012.
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