(2012) 04 MAD CK 0153

In the Madras High Court

Case No : Tax Case (Appeal) No''s. 574 and 575 of 2011

Capricorn Food Products India Ltd. APPELLANT

Vs

Asstt. CIT RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:
Income Tax Act, 1961 — Section 10B, 80HHC

Citation : (2012) 04 MAD CK 0153

Hon'ble Judges : K. Ravichandra Baabu, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Anita Sumanth, for the Appellant; T.R. Senthil Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Tax Case (Appeals) are at the instance of the assessee against the order of the Tribunal by raising following questions of law :

(1) Whether on the facts and in the circumstances of the case the Tribunal is right in law in remitting the issue of claim of deduction under s. 10B to the file of the AO in view of its specific and clear finding that all details have been furnished to the AO who was also given an opportunity in regard thereto in the course of appellate proceedings before the CIT(A)?

The two appeals relate to asst. yrs. 2006-07 and 2007-08. The appellant is a company registered under the provisions of the Indian Companies Act engaged in the manufacture of food products. The company was initially engaged in the processing and exporting of gherkins, a vegetable product and mango pulp in OTS cans. The company subsequently commenced a new venture from 1st April, 2002 involving the processing and exporting of fruits and conversion of fruit products. It is also engaged in broad banding of the activity of the company. The assessee is stated to have got the licence from the Development Commr., Government of India, Ministry of Commerce and Industry, Visakhapatnam Export

Processing Zone, on 11th April, 2001 for enhancing the existing production capacity on a revised export turnover, import of capital goods, raw materials, components, consumables and packing materials in a period of five years. The assessee was permitted to engage in the manufacture of mango, guava, banana and papaya pulp, tomato puree etc. The assessee submitted certificate of approval for 100 per cent EOU dt. 16th March, 2001 valid upto to 31st March, 2007. The approval for additional items such as mango pulp/guava pulp/banana pulp/papaya pulp/tomato pulp was renewed upto 31st March, 2012. The additional items were approved on 14th May, 2007. The appellant claimed relief under s. 10B of the Act for the first time in respect of asst. yr. 2006-07 and again in 2007-08. The AO disallowed the claim of deduction under s. 10B of the appellant on the ground that the factory of the EOU is operating from the same place where the original DTA unit was established, which is catering the domestic market. The other ground is that no additional building was erected to install the new or the additional machinery. The assessee maintained no separate books of accounts for local sales and export sales. In the earlier years, the assessee claimed relief under S. 80HHC only and the assessee did not produce any material to show that the profit earned for claiming deduction under S. 10B came from the new 100 per cent EOU only. On the above stated grounds, the claim was rejected by the AO. Aggrieved by this, the assessee filed an appeal before the CIT(A).

2. Evidently, in the course of the appeal before the first appellate authority, the assessee produced documents, particularly, with reference to the objection that the assessee was functioning at the very same address where it was originally established. Apart from that, the appellant had also produced certificate of approval as 100 per cent EOU dt. 16th March, 2001 which was valid upto 31st March, 2007. Later on, approval was accorded for mango pulp, guava pulp, banana, papaya pulp, tomato puree which was renewed upto 31st March, 2012. As regards the allegations that separate books of accounts were not maintained for local and overseas export, the appellant also produced details which had been checked by excise authorities.

3. As regards the specific allegations that deduction under s. 10B of the Act was not claimed in the earlier year, the appellant pointed out that the income was computed under the MAT formula, which would be more than the income computed under normal circumstances. The assessee apparently did not claim any relief in the earlier years. Considering the fact that in respect of the old unit, which had exported vegetable products, deduction under S. 80HHC was claimed, the appellant had claimed deduction under S. 10B for the first time during 2006-07. More so, in the earlier years the assessee returned loss. In the background of the said facts, the appellate authority sought for a report from the AO. On considering the report, the CIT(A) came to the conclusion that the assessee had furnished the gross turnover relating to the comprehensive area and at the same time, separately identified the turnover relating to EOU and DTA and the claim was only in respect of export sales, for which exclusive invoices

were raised and the sale proceeds were received through banking channel. The first appellate authority pointed out that the clarification given by the assessee as regards the various entries in Form 56G required no further elucidation. Incidentally, the CIT(A) also pointed out that it is not the case of the assessing authority that the appellant had not overstated its export or claimed excessive relief. Except for the contention that the units were not different and they were one and the same, there were no other materials on the part of the assessing authority to deny their relief.

4. As regards the location of both the units in the same building, the CIT(A) pointed out that the exports are governed by regulations enforced by the Central excise and customs authorities. There was no mix up of the receipts nor any difficulty in finding the export receipts. As regards the sales-tax deferral obtained for the old unit, the CIT(A) found that it had no application to EOU. Hence, the Sales-tax Department, much less the deferral, had no role to play on 100 per cent EOU status. Since the entire turnover pertained to 100 per cent EOU, there are no materials to deny the relief claimed by the appellant.

5. As regards the range of products both under DTA and EOU, the CIT(A) referred to the Asstt. Development Commr., VEPZs clarification dt. 22nd Jan., 2009 that all exemptions/concessions available to the main product would automatically be applicable to the additional products that had been approved under the broad banding from the date of approval by the Commissionerate and pointed out that the documents furnished corroborated the broad branding and approval for the manufacture of additional products were accorded to the assessee. Regarding the location of both the units in the same building, the CIT(A) pointed out that the physical demarcation, as claimed by the assessee, was also relevant because the Development Commr., VEPZ, had accorded separate approval to the 100 per cent EOU as a new unit and hence not an extension of the old unit. Thus, the claim of existence of two different units, one under DTA and the other as EOU was supported by various documents. The DTA and EOU units are physically distinguishable and certified by customs and excise authorities and the Development Commr. VEPZ, Vizag and that there is also a Government road bisecting DTA and EOU units.

6. Referring to the Boards Circular No. 1 of 2005, the appellate authority pointed out that there are enough materials available on record to uphold the claim of the appellant that exemption under S. 10B was admissible, since the appellant had satisfied all the conditions laid down in the provisions of S. 10B of the Act. Thus, going by the above reasoning, the appellate authority allowed the appeal.

7. The Revenue took the matter on appeal before the Tribunal. In para 3 of its order, the Tribunal observed that the CIT(A) had given relief to the assessee on the basis of fresh evidences filed before him and these evidences were given for consideration by the AO. Having thus found that the Revenue was given sufficient opportunity to file a report on the material furnished by the assessee, surprisingly, the Tribunal, however, remanded the assessment once again to the

assessing authority to decide the issue after considering the entire evidences produced before the CIT(A) or to be produced afresh by the assessee.

8. A perusal of para 4 of the order of the Tribunal shows that the said order was passed on the basis of R. 46A of the IT Rules, 1962 on a specific ground taken by the Revenue that the CIT(A) had not followed the requirement of R. 46A. We do not find that there exists any justification for the Tribunal to take a view that R. 46A had not been followed to warrant a remand.

9. Learned standing counsel appearing for the Revenue pointed out that subsequent to the order of the Tribunal, notice had been issued to the assessee, and the assessee in turn, also sought for time. Hence, no grievance is made out by the assessee. It is admitted that in the course of the appeal proceedings before the CIT(A), all the issues raised by the assessee were placed before the assessing authority for his remarks and report. On the facts thus admitted, we do not find any justification in the order of the Tribunal remanding the case to the AO for fresh consideration, which, in the context of the above admitted facts would amount to nothing but an empty ritual.

10. As already pointed out, a reading of the order of the CIT(A) would show the specific contention of the appellant that the assessing authority had not looked into the columns provided in the annexure to Form 56G, which gives the details of turnover for export sale as well as on the domestic sale. On being satisfied about this material available on record, the AO was directed to file a report on the said evidences produced. After hearing the assessee and the Revenue, the CIT(A) passed a detailed order on every objection raised.

11. As far as R. 46A of the IT Rules, 1962, which has been referred to by the Tribunal, is concerned, it deals with production of additional evidence before the Dy. CIT(A) and CIT(A). Under sub-R. (3) of r. 46A of the Rules, the Dy. CIT(A), or as the case may be, the CIT(A), shall not take into account any evidence produced under sub-r. (1), unless the AO has been allowed a reasonable opportunity--

(a) To examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

12. As far as these two aspects are concerned, there is no denial of the fact that the documents that were placed before the CIT(A) related to Form 56G. Secondly, with reference to the documents pertaining to local sale and export sale, the appellant produced a certificate granted by the Export Commr. As regards the separate location of the export unit. A perusal of the assessment order passed clearly shows that the assessee has placed the certificate issued by the Joint Development Commr., Government of India, Ministry of Commerce & Industry, and Viskhapatnam Export Processing Zone. The materials thus

produced went? Thus verified by the AO and the report was also filed before the Commr.

13. Learned counsel for the appellant submits that they had not placed any new documents, which had not been dealt with by the AO. Even in the course of the appeal before the CIT(A), details in support of the various columns in Form 56G were placed before the assessing authority for his remarks and report. Thus, even if the documents produced on the details of Form 56G very much available before the AO amounted to fresh materials, yet, we find that the requirements of the rule are finally complied with. The Revenue cannot now deny this aspect, particularly in the context of the report filed by the AO before the CIT(A).

14. In view of the absolute compliance of the provisions of R, 46A(3), we do not find that there exists any further ground for the Revenue to insist on remand. The order of the Tribunal shows that there is hardly any reference as to the fresh material which went unnoticed or which had not been placed before the officer for offering his comments. In the circumstances, we agree with the submission of the learned counsel for the assessee and we do not find any justification in granting the order of remand. Consequently, the order of the Tribunal is set aside and the appeals are allowed. No costs.