
(2014) 10 AP CK 0047
In the Andhra Pradesh High Court
Case No : ITTA No. 216 of 2003

CIT

APPELLANT

Vs

Indo Aquatics Ltd.

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Income Tax Act, 1961 — Section 10B 56 80HH

Citation : (2014) 10 AP CK 0047

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : S.R. Ashok, Senior Standing Counsel, Advocate for the Appellant; S. Ravi, Senior Counsel for Koduru Ramachandra Reddy, Advocate for the Respondent;

Judgement

L.N. Reddy, J.

1. This appeal is preferred by the Revenue against the order, dated 30-4-2002, passed by the Hyderabad Bench B of the Income-tax Appellate Tribunal (for short "the Tribunal"), in I. T.A. No. 764/Hyd/1998.

2. Briefly stated that facts are as under :

"The respondent got itself registered as 100 per cent, export oriented unit. In its returns, for the assessment year 1995-96, it claimed certain deductions, or exemptions referable to section 10B of the Income-tax Act, 1961 (for short "the Act"). They included,

(a) the interest earned in respect of bank deposits kept for opening letters of credit, being Rs. 1,89,270;

(b) interest given by banks in respect of moneys received by them, on behalf of the respondent, against public issue of shares, Rs. 3,48,214; and

(c) interest earned in respect of temporary interoperate deposits kept by the respondent with other companies out of the proceeds of the public issue of

shares, Rs. 10,09,981."

3. The Assessing Officer disallowed the same in his order of assessment dated 27-2-1998. Aggrieved by that, the respondent preferred an appeal before the Commissioner (Appeals). The appeal was rejected through order dated 20-8-1998. Thereupon, the respondent filed I. T.A. No. 764 of 1998, before the Tribunal. The appeal was allowed, and all the three amounts, referred to above, were held permissible for exemption.

4. Heard Sri S.R. Ashok, learned senior counsel for the Department, and Sri S. Ravi, learned senior counsel for the respondent.

5. Parliament intended to encourage the entrepreneurs to export the products from India. As part of that, it incorporated section 10B of the Act. Sub-section (1) thereof, as it stood before the provision was amended in the year 2001, reads as under :

"10B. Special provision in respect of newly established hundred per cent, export-oriented undertakings."(1) subject to the provisions of this section, any profits and gains derived by an assessee from a hundred per cent, export-oriented undertaking (hereafter in this section referred to as "the undertaking") to which this section applies shall not be included in the total income of the assessee."

6. A perusal of this, discloses that the profits and gains derived from 100 per cent, export-oriented undertaking shall not be included in the total income of an assessee. This almost falls into the category of the deductions provided for under Chapter VI-A except that the exemption or deduction is in its entirety. However, the basic principle, namely, that the profit and" gain, must be derived from the concerned activity, is common to both the provisions.

7. In the instant case, the respondent claimed exemption from tax, the three amounts, referred to above. There should not have been much difficulty as regards the first one. The reason is that obtaining of letters of credit is an essential activity for undertaking exports and the deposit of amounts for that purpose is a condition precedent. If the deposits so made have yielded interest, it certainly is attributable to or can be said to be derived from the activity of export. However, as regards the remaining two, it is difficult to relate or connect them to the activity of export.

8. The respondent has gone for public issue to mobilise the resources. The intending purchasers of the shares made deposits corresponding to the value of the shares, which they propose to purchase between the date of application and date of allotment of shares or rejection of application, as the case may be, the amounts yielded interest. The interest so yielded cannot be said to be an income derived from 100 per cent, export activity. It is no part of the scheme of any export that the agency must mobilise resources by going for public issue much less that such an agency is entitled to appropriate the interest that is derived, on account of its own delay in finalising the issue of shares. The third component

stands on a still fragile footing. Before it has allotted shares, the respondent has taken away the money deposited by the intending purchasers of shares and has invested in some companies. The interest that is earned from such deposits was sought to be clubbed with the amount representing profits and gains derived from 100 per cent, export activity.

9. The Commissioner (Appeals) referred to the judgments of the Supreme Court in Tuticorin Alkali Chemicals and Fertilizers Ltd., Madras Vs. Commissioner of Income Tax, Madras, and disallowed both the claims: The Supreme Court took the view that the amounts of such nature are assessable under section 56 of the Act. The Commissioner (Appeals) observed that though the judgment was referable to the amounts that were invested prior to the commencement of production, the same analogy applies, subsequent to the production also. Other judgments were also relied upon.

10. The Tribunal reversed the findings of the Commissioner (Appeals) just by making a reference to its own order. That was an order, passed before the Madras High Court rendered its judgment in Commissioner of Income Tax Vs. Pandian Chemicals Ltd., , which, in turn, was upheld by the Supreme Court in Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, . The principle of law laid down therein was referred to section 80HH of the Act. Their Lordships held that unless the amount is referable to the" activity of the concerned industry and it has close nexus with such activity, it cannot be brought under the purview of section 80HH of the Act. In the light of that judgment, the order of the Tribunal, be it in the instant case, or the one in (2002) 81 ITD 106 (Hyd) , cannot be said to be a good law.

11. It is brought to our notice that the Tribunal itself has rectified its order in Shiva Shankar Granites (P.) Ltd.'s case (supra), in the light of the judgment of the Supreme Court in Pandian's case (supra).

12. We, therefore, partly allow the appeal, setting aside the order of the Tribunal, in so far as it relates to items (b) and (c) claimed by the respondent, viz. :

"(b) Interest given by the banks in respect of the moneys received by the said banks on behalf of the assessee-company against the public issue of shares; and

(c) Interest earned in respect of the temporary interoperate deposits kept by the assessee-company with other companies, out of the proceeds of the public issue of shares."

However, we sustain the relief granted in respect of item (a), viz., interest earned in respect of bank deposits kept for opening letters of credit.

13. There shall be no order as to costs.

14. The miscellaneous petition filed in this appeal shall also stand disposed of.