(2002) 09 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 674 of 1995

Commissioner of Income Tax — APPELLANT

Vs

Menon Impex P. Ltd. — RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:
Income Tax Act, 1961 — Section 10A

Citation : (2003) 180 CTR 40 : (2003) 259 ITR 403

Hon'ble Judges : R. Jayasimha Babu, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.—The question referred is as to ""whether, on the facts and in the circumstances of the case, the Appellate Tribunal is

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 the business of the industrial undertaking so as to be entitled to get the benefit of Section 10A of the Income Tax Act, 1961 ?"".

2. The assessee had set up a new industrial undertaking in Kandla Free Trade zone for the manufacture of light engineering goods. The goods

therein were exported during the assessment year 1985-86. In the course of the business of that industrial undertaking, the assessee was required

to open letters of credit with banks who had as a condition for issuing such letter required the assessee to make deposits. On those deposits, the

assessee earned interest.

3. The assessee''s claim for treating that amount of interest income as income derived from the newly set up industrial undertaking and treating that

income as exempt u/s 10A of the Income Tax Act, 1961, was negatived by the Assessing Officer and on appeal by the Commissioner, but was

allowed by the Tribunal.

4. Section 10A of the Act provides that the profits and gains derived by an assessee from an industrial undertaking to which that section applies

shall not be included in the total income of the assessee. The Supreme Court in the case of Cambay Electric Supply Industrial Co. Ltd. Vs. The

Commissioner of Income Tax, Gujarat-II, Ahmedabad, has held that the words ""derived from"" are narrower in scope than the words ""attributable

to"".

5. In the case of Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, , the Supreme Court observed that (headnote): ""the

word ''derive'' is usually followed by the word ''from'' and it means : ''get, to trace from a source ; arise from, originate in, show the origin or

formation of"". It was pointed out that unless the source of the income is from an industrial undertaking, such income cannot be regarded as ""derived

from"" industrial undertaking. It was held that the income derived from sale of import entitlements could only be said to be the export promotion

scheme and not the industrial undertaking. It was also observed by the court that where nexus between profits and gains and the industrial

undertaking was not direct, but incidental, such income could not have been regarded as having been derived from industrial undertaking.

6. In this case the interest received by the assessee was on deposits made by it in the banks. It is that deposit which is the source of income. The

mere fact that the deposit made was for the purpose of obtaining letters of credit which letters of credit were in turn used for the purpose of the

business of the industrial undertaking does not establish a direct nexus between the interest and the industrial undertaking.

7. The Tribunal, therefore, was in error in holding that there was direct nexus between the two. The question referred to us is answered in favour of

the Revenue and against the assessee.

