

(2013) 07 MAD CK 0318

In the Madras High Court

Case No : TCA. No's. 371 of 2005, 1225 and 1226 of 2008 and 131 of 2006

Commissioner of Income Tax

APPELLANT

Vs

M/s. Relco Private Limited

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Income Tax Act, 1961 — Section 10B, 10B(5)

Citation : (2013) 359 ITR 291

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant; S. Kumar, for the Respondent

Judgement

Chitra Venkataraman, J.—Tax Case (Appeal). Nos. 371 of 2005, 1225 and 1226 of 2008 are filed at the instance of the Revenue as against the order of Income Tax Appellate Tribunal for the assessment years 1995-96, 1993-94 and 1996-97 respectively. The above Tax Case Appeals were admitted on the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee's unit which was only engaged in executing job work for the foreign companies under agreements with them and which has not exported any articles or things or computer software was entitled to exemption u/s 10B?
2. Without prejudice to the above questions, whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was eligible for exemption u/s 10B even though the eight year period commencing from the assessment year 1984-85 for claiming the exemption ended with the assessment year 1991-92 and the assessee had not exercised its option u/s 10B(5) for the assessment year 1989-90, 1990-91 and 1991-92?

As far as Tax Case (Appeal). No. 131 of 2006, filed at the instance of the

Revenue as against the order of Income Tax Appellate Tribunal for the assessment year 1997-98 is concerned, in addition to the above two questions of law, the following question of law also arose for consideration:-

Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee company had established a new Export Oriented Unit which was not a revival or reconstruction of the old unit disregarding the facts narrated by the Assessing Officer?

2. The facts relating to the case herein are that the assessee company was recognized as 100% Export Oriented Unit (EOU) by the Government of India and started its commercial production, with effect from 4.9.1989. It is stated by the Assessing Officer that by December 1989, the assessee company became sick. Consequently, it entered into memorandum of understanding with a foreign collaborator, to work on their behalf on job work basis; with the result, the assessee started its earlier business and went ahead with the new business in the manufacture of films and export of thick film resistors, chip resistors etc.

3. It is seen from the assessment order passed for the assessment year 1994-95 that the assessee commenced commercial production on 4.9.1989. Considering the recognition that it got as 100% EOU on 4.9.1989, the assessee claimed exemption u/s 10B of the Income Tax Act (hereinafter referred to as "the Act"). On the relief being rejected, the assessee went on appeal before the Commissioner of Income Tax (Appeals). The claim of the assessee was allowed by the Commissioner of Income Tax (Appeals). A reading of the order of the Commissioner relating to assessment year 1993-94 showed that he followed the appeal orders for the assessment years 1994-95 and 1995-96, thereby, allowed the assessee's appeal. Aggrieved by the same, the Revenue went on appeal before the Income Tax Appellate Tribunal. It is seen from the order passed by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal relating to the assessment years 1993-94, 1996-97 and 1997-98 that based on the order of the Tribunal for the assessment year 1994-95 and 1995-96 holding the view that the assessee was eligible for deduction u/s 10B of the Act, the above said appeals for the years 1993-94, 1996-97 and 1997-98 were dismissed.

4. Considering the fact that the order of the Commissioner as well as the Tribunal are bereft of details, this Court directed the assessee as well as the Revenue to produce the order of the Commissioner relating to the assessment year 1994-95, which has a bearing to the order of assessment passed prior and subsequent thereto also. A reading of the order of the Commissioner dated 18.3.1997 revealed the following facts.

5. The assessee company carried on job work in the production of carbon and metal film resistor for the foreign collaborators M/s. Rawmat Electronics (P) Limited, Singapore and M/s. Talema, Germany under a memo of understanding, as per which, the foreign collaborators were to send raw resistors as well as the plant and machinery for the job work and the assessee company was to send

back the processed product. It is further seen that since its inception in December 1983, the company was incurring losses. For the assessment year 1993-94, it declared profit but again for the assessment year, it declared loss. Evidently, there was no local sale. The assessee claimed that it was a 100% EOU since 1989. It was found that the company started commercial production since December, 1989. It is further stated that by the year ending 30.6.1988, it became a sick company and thereafter alone, it entered into the foreign collaboration. It is stated that it claimed EOU status from 1993-94. It is further stated that after 30.6.1988, the assessee started a new project. Thus, on the claim of the assessee for 100% deduction u/s 10B of the Act, rejected by the Assessing Officer, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

6. A reading of the order of the Commissioner of Income Tax (Appeals) dated 18.3.1997 passed in ITA. No. 861/C/96-97 shows that originally the assessee asked for conversion of the existing industrial undertaking into a 100% EOU for the manufacture of carbon/metal film resistors. However, as the manufacture of such items did not come under the purview of the licensing authority, the Ministry had issued permission to the assessee for the establishment of a new undertaking under the 100% EOU scheme for the manufacture of thick film resistor network, chip resistor and printed circuit transformers. Thus, stopping the earlier business, under new licence No. 1/89 (100% EOU) dated 14.8.89, the company started manufacturing the above items. A reading of the order passed by the Commissioner of Income Tax (Appeals) dated 18.3.1997 in ITA. No. 861/C/96-97 shows that in the course of hearing, the Chartered Accountant produced a letter dated 31.1.1997 from the Development Commissioner, Government of India, Ministry of Commerce, Madras Export Processing Zone was made, wherein, it certified that M/s. Relco Private Limited, Salem was a 100% Export Oriented Unit as per the letter of Intent No. 158(88)/EO 378(88) IL dated 30.12.88, which was subsequently converted as letter of permission No. PER (91)/EO 378(88) dated 13.12.91 issued by the Secretariat for Industrial Approvals (SIA), Department of Industrial Development, Ministry of Industry, New Delhi for manufacture and export of (i) Thick Film Resistor network, (ii) Chip resistor and (iii) Printed Circuit Transformer, as per the terms and conditions laid therein. Green Card No. 032/MEPZ dated 18.5.1992 was also issued by the Development Commissioner's office. On the denial of the benefit of exemption u/s 10B of the Income Tax Act by the Income Tax Department, the Development Commissioner further clarified that the Secretariat for Industrial Approvals in the Ministry of Industry was responsible for the issue of approval letters for an entrepreneur who intends to set up 100% EOU and it was also clarified that the approval by the Secretariat was communicated by the Director or Under Secretary dealing with the subject. After complying with all the formalities, the assessee was issued Green Card. Communication to that end was also issued and as per letter dated 30.12.88 and Licence No. 1/89 (100% EOU) dated 14.8.89, the assessee was permitted to commence commercial production with effect from 4.9.1989.

With reference to assessment years 1990-91, 1991-92 and 1992-93, the Chartered Accountant pointed out that in the statement filed along with the returns, it was declared that the assessee was not exercising its option for application of Section 10B for these years. From the assessment year 1993-94, the assessee had exercised such option and also declared that income is exempted from Section 10B of the Act. Based on this, the Commissioner allowed the appeal holding that the assessee was entitled to exemption u/s 10B of the Act.

7. The said order was taken on appeal by the Revenue in ITA. No. 1376 (Mds)/1997, and by order dated 21.9.2004, the Income Tax Appellate Tribunal pointed out that there was no diversification and expansion of the existing business and having regard to the licence given in recognition, the Commissioner of Income Tax (Appeals) was justified in coming to the conclusion that the assessee was entitled to exemption u/s 10B of the Act. Thus, the Revenue's appeal was dismissed. As far as the assessment year 1994-95 is concerned, the said order of the Tribunal has become final.

8. As already pointed out, the present appeals preferred by the Revenue related to assessment years 1995-96, 1993-94, 1996-97 and 1997-98 respectively. The orders passed by the Commissioner as well as by the Tribunal were thus based on the order passed by the Tribunal for the assessment year 1994-95 and there are no materials placed before this Court to contend that the assessee had violated the conditions of licence, thereby disentitling the assessee to have the benefit of deduction u/s 10B of the Act.

9. In the background of the facts thus placed before this Court and having regard to the materials available in the order of the Commissioner for the assessment year 1994-95 and that of the Tribunal, as already pointed out, there being no other material to take a different view and the order of the Tribunal for the assessment year 1994-95 having thus attained finality, we do not find any justifiable ground to upset the order of the Tribunal. In the circumstances, we confirm the order of the Tribunal, thereby the above Tax Case (Appeals) are dismissed. No costs.