(2006) 02 MAD CK 0153

In the Madras High Court

Case No : Tax Case (Appeal) No''s. 24 and 25 of 2006

Commissioner of Income Tax — APPELLANT

Vs

P. Damodaran — RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 250, 260A, 80IA, 80IA(2)

Citation : (2006) 202 CTR 454 : (2006) 282 ITR 466

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthan Raja, J.—The present appeals are filed u/s 260A of the Income Tax Act, 1961, by the Revenue, in I.T.A. Nos. 1809 and 1810/Mds/2000, passed by the Income Tax Appellate Tribunal, Madras, "B" Bench raising the following substantial question of law:

Whether, in the facts and circumstances of the case, the Tribunal was right in upholding the assessee''s claim for deduction u/s 80IA, when he himself had given a sworn statement to the Central excise authorities that he did not have any activity of manufacture in the said premises?

2. The facts leading to the above question of law are as under:

The assessee had claimed deduction u/s 80IA(2)(iv)(c) of the Income Tax Act for manufacturing cable joining kit used in the telecommunication industry at Pondicherry, which is an industrially backward area. The assessment order originally passed for the assessment year 1995-96, was set aside by the Commissioner of Income Tax (Appeals) with a clear direction to the Assessing Officer to examine the claim of the assessee with evidence in support of the return filed by him. The Assessing Officer thereafter passed an assessment order u/s 143(3) of the Income Tax Act, read with Section 250 on March 30, 2000. For the assessment year 1997-98, the Assessing Officer completed the assessment u/s 143(3) of the Act. The Assessing Officer rejected the assessee''s claim for deduction u/s 80IA(2)(iv)(c) relying upon the results of proceedings taken by the Central excise authorities against the assessee, by holding that the assessee did not carry on any manufacturing or production activities, but was indulging in stock transfer and in raising sales invoices from Pondicherry. Finally, the Assessing Officer held that the assessee was not able to establish that any manufacturing activity had been commenced for claiming deduction u/s 80IA of the Act.

3. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), and claimed that the Assessing Officer rejected his claim without any independent enquiry and also ignored the real fact that the assessee had indulged in manufacturing activity at Pondicherry, and was therefore entitled for relief u/s 80IA. After hearing the arguments, the Commissioner of Income Tax (Appeals) came to the conclusion that the Assessing Officer, on his own, had not made on-the-spot enquiry so as to ensure the real facts and correctness of the assessee''s claim that he had carried on manufacturing activity of cable joining kits at Pondicherry. The Commissioner of Income Tax (Appeals) further found that even after the assessment had been set aside for the assessment year 1995-96 with a direction to examine the claim of the assessee u/s 80IA de novo, no such enquiries were made by the Assessing Officer. The Commissioner of Income Tax (Appeals) finally held that the assessee is entitled to relief u/s 80-IA of the Act.

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the Commissioner of Income Tax (Appeals). Standing counsel appearing for the Revenue submitted that the Tribunal was wrong in allowing the deduction u/s 80-IA of the Act and failed to appreciate that the assessee himself had admitted in the statement dated December 12, 1996, before the Assistant Commissioner of Central Excise (Anti Evasion), Trichy, that the premises were used only as godown for packing goods in carton boxes containing the cable joining materials. He also further submitted that the Tribunal had not appreciated the statement recorded on June 11, 1997, that the assessee had admitted that he was engaged only in trading activity of buying and selling.

5. We heard the arguments of counsel. The assessee had claimed that he had started his factory at Pondicherry where manufacturing activity was done, whereas the stand of the Revenue was that, at Pondicherry, no manufacturing activity was carried on other than using the premises for correspondence and for despatching the goods by the assessee. The Tribunal had given a finding that the Assessing Officer had not made any enquiry to find out whether the assessee had carried out any manufacturing activity at Pondicherry, even after the matter was remanded back to his file. Similarly, there was nothing to suggest that the

Central excise authorities ever visited the assessee''s factory to find out the veracity of his claim that the manufacturing activities were being carried out at his factory premises at Pondicherry. Also, it is found that the Central excise authorities visited only the office premises of the assessee and examined certain documents. Hence, we find no justification in rejecting the assessee''s claim for deduction u/s 80-IA merely relying on the observation of the Central excise authorities. Further, it was a factual finding by the authorities below that the machinery installed in the premises and the raw materials utilised by the assessee, suggest that there was a production of article or thing for the purpose of using the same in the telecommunication industry. When the factual finding itself is that the assessee manufactured telephone cables joining kits, the assessee is entitled for the benefit available u/s 80-IA of the Act.

6. In view of the foregoing conclusions, we find no error in the order of the Income Tax Appellate Tribunal and hence no substantial question of law arises for consideration of this Court. Hence, the above tax cases are dismissed. No costs. Consequently, the connected TCMP No. 26 of 2006 is closed.