
(2005) 03 MP CK 0051
In the Madhya Pradesh High Court
Case No : IT Appeal No. 15 of 2002

Commissioner of Income Tax	Vs	APPELLANT
Simplex (Indore) (P) Ltd.		RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Income Tax Act, 1961 — Section 260A, 80IA

Citation : (2005) 199 CTR 185 : (2006) 282 ITR 542

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; S. Neema, for the Respondent

Judgement

A.M. Sapre, J.—This is an appeal filed by Revenue (CIT) u/s 260A of the IT Act against an order dt. 7th Sept., 2001, passed by Income Tax Appellate Tribunal (hereinafter referred to as Tribunal) in ITA No. 180/Ind/1997 and ITA No. 175/Ind/1997. This appeal was admitted for hearing on following substantial question of law :

"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in confirming the order of CIT(A) in holding that the assessee was entitled to deduction u/s 80IA without appreciating that the additions on account of unproved purchases, suppression of sales of scrap, difference of stock, insurance claimed, interest on security deposit cannot be said to be derived from industrial activities ?"

2. Heard Shri R.L. Jain, learned senior Counsel, with Ku. V Mandlik, learned Counsel for the appellant/Revenue, and Shri S. Neema, learned Counsel for the respondent/assessee.

3. Having heard learned Counsel for the parties and having perused record of the case, we are of the opinion that this appeal deserves to be allowed and the case (appeal) is remanded to Tribunal to decide the appeal afresh on merits.

4. While deciding the appeal on several grounds, the Tribunal decided the ground which is subject-matter of this appeal, i.e., ground (iv) in paras 12 and 13 as follows :

"12. Ground No. (iv) relates to the restriction of the relief u/s 80IA by the CIT(A) on the addition.

13. The contention of the assessee is that the assessee is entitled to the relief on bank interest and charges earned by the assessee on the margin provided to the bank for letter of credit guarantees. The CIT(A) had dealt with this issue in para 9 of his order and following the decisions of the Madras High Court in the case of Commissioner of Income Tax Vs. Seshasayee Paper and Board Ltd., and of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Vidyut Steel Ltd., , he has allowed the relief on the interest earned from MPEB on the security deposit, insurance claim and others while affirming the non-consideration of other items like bank interest and charges earned by the assessee on the margins provided to the bank for the letter of credit guarantees. The AO has followed the decision of the Karnataka High Court in the case of Commissioner of Income Tax Vs. Siddaganga Oil Extractions Pvt. Ltd., while doing so. In this case, the Hon"ble Court was pleased to hold that the income from lorry hire, weighment charges, miscellaneous receipts, income from fixed deposits, etc., should not be included in the computation of income for the purpose of calculation of special deduction as they were not income of the industrial undertaking. We thus find no reason to interfere with the orders of the lower authorities in this regard."

5. Mere perusal of aforequoted two paras would show that the Tribunal neither discussed the facts relating to ground, nor discussed, much less, dealt with, the submission of parties nor gave a categorical finding as to why the benefit underlined u/s 80IA can be claimed by assessee. Mere reference to some of the case law is not enough.

6. It is the duty of the Tribunal as a last Court of appeal to deal with the issue in detail by taking note of the facts relating to the issue, relevant sections governing the issue and then the submissions of the parties in support of their case and lastly, the conclusion based on decided cases depending upon the facts of each case. As noticed earlier, we do not find this exercise has been done by the Tribunal while deciding the issue sought to be raised by the parties in this appeal. Indeed, Section 80IA is not referred to and issue is decided in favour of assessee. We cannot countenance with such casual approach in deciding the issue. It cannot be said to be legal. It is incapable of being upheld in appeal on merits even. Nor this Court can take up the issue de novo for deciding in the light of what the Tribunal has done.

7. This Court is possessed of power to remand the case. In other words, power to remand is available to this Court while hearing the appeal u/s 260A of the Act. We intend to exercise this power in the interest of justice. It does not cause any

prejudice to either.

8. In view of aforesaid discussion, we refrain from going into the merits of the case and while remanding the case to the Tribunal, allow the appeal, and set aside the impugned order insofar as it relates to ground No. (iv) is concerned. The Tribunal is directed to decide the appeal insofar as ground No. (iv) is concerned, referred supra on merits strictly in accordance with law keeping in view observations made supra. Let this be done within six months as an outer limit. No costs.