(2012) 09 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No''s. 6364 to 6369 of 2012, Special Leave to Appeal (Civil) No. 12756 of 2008 and S.L.P. (C) No''s. 29826-29829 of 2008 and 949 of 2009

India Comnet International — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:
Income Tax Act, 1961 — Section 10A, 56

Citation : (2012) 254 CTR 339 : (2013) 354 ITR 673 : (2012) 210 TAXMAN 566

Hon'ble Judges : S.H. Kapadia, C.J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Ramesh Singh, Surekha Raman, Namrata Sood and Anuj Sarma, for the Appellant; Rupesh Kumar, Arijit Prasad, S.W.A. Qadri, Anil Katiyar and B.V. Balaram Das, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Learned Counsel on both sides. Leave granted.

2. The civil appeals filed by the Assessee are allowed with no order as to costs.

3 Heard Learned Counsel on both sides.

4. Leave granted in this batch of three cases.

5. In civil appeal arising out of SLP (C) No. 12756 of 2008, the facts are as under:

The Assessee is a 100% Export Oriented Unit, which develops and exports software. It earns foreign exchange. It has earned interest income amounting to Rs. 92,06,602/- on Foreign Currency Deposit Account permitted by FERA under Banking Regulations. The Assessee was asked to explain why the said sum should not be assessed under the Head 'Other Sources' in Section 56 of the Income Tax Act, 1961 ('Act', for short). This query was raised because, in its Return of Income, the Assessee claimed exemption in respect of the said amount of Rs. 92,06,602/- u/s 10A of the Act. The Assessee has lost throughout in the proceedings.

6. The impugned judgment of the High Court is based on the judgment of the Madras High Court in the case of Commissioner of Income Tax Vs. Menon Impex P. Ltd., wherein a similar question arose as to "Whether, on the facts and in the circumstances of the case, the Tribunal was 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 business of the industrial undertaking so as to be entitled to get the benefit of Section 10A of the Income Tax Act, 1961?" In that case, the Madras High Court examined in detail the transaction in question and found that the Assessee had set up a new industrial undertaking in Kandla Free Trade zone for manufacturing light engineering goods. The goods therein were exported during the Assessment Year 1985-1986. In the course of business, the Assessee was required to open a Letter of Credit. On such Deposit, the Assessee earned interest. Under the said circumstances, the High Court held, following the judgment of this Court in the case of Commissioner of Income Tax, Karnataka Vs. Sterling Foods, Mangalore, , that the interest received by the Assessee was on deposit made by it in the Banks; that such deposit was the source of income; and that, the mere fact that the deposit was made for obtaining Letter of Credit which Letter was, in turn, used for the purpose of business undertaking did not establish a direct nexus between the interest and industrial undertaking. Thus, the judgment of the Madras High Court in Menon Impex (P.) Ltd. (supra) was based on the examination of the transaction in detail which exercise has not been undertaken in the present case.

For the above reasons, we set aside the impugned judgment and remit the cases to the Income Tax Appellate Tribunal ('ITAT', for short) for deciding the matter afresh after examining the transaction in question, as done by the Madras High Court in the ease of Menon Impex (P.) Ltd. (supra).

7. Needless to state that ITAT will give an opportunity to the Assessee to produce relevant documents in support of the transaction in question before deciding the question on law. Accordingly, the civil appeals filed by the Assessee stand allowed with no order as to costs.

