

(2007) 07 MAD CK 0161

In the Madras High Court

Case No : Tax Case (Appeal) No. 980 of 2007

India Comnet International

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 04-07-2007

Acts Referred:

Income Tax Act, 1961 — Section 10A, 143(1), 143(2), 143(3), 260A

Citation : (2008) 304 ITR 322 : (2009) 185 TAXMAN 51

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

Bench : Division Bench

Advocate : Anita Sumanth, for the Appellant;

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—This appeal is filed u/s 260A of the Income Tax Act, 1961 by the assessee, against the order of the Income

Tax Appellate Tribunal, Bench "A", Chennai in I.T.A. No. 2512/Mds/2005 dated 29.12.2006, raising the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the interest income derived by the appellant is

not eligible for relief u/s 10A of the Income Tax Act?

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

The assessee is a Private Limited Company established under the Madras Export Processing Zone and is engaged in the business of development

and export of software. It is a 100% Export Oriented Unit. The relevant assessment year is 2002-2003 and the corresponding accounting year

ended on 31.03.2002. The assessee filed Return of income on 31.10.2002 admitting "nil" income after claiming exemption u/s 10A of the Income

Tax Act ("Act" in short), amounting to Rs. 8,34,84,900/-. The Return of income was processed u/s 143(1) of the Act on 19.03.2003 accepting

the income returned, determining a refund of Rs. 20,52,365/-. Later the assessment was taken up for scrutiny to recompute the exemption u/s 10A

of the Act by excluding the interest receipt of Rs. 92,06,602/-. Notice u/s 143(2) of the Act was issued and the assessment was completed u/s

143(3) of the Act by adding to income, the interest on deposits amounting to Rs. 92,06,602/-. Aggrieved by the order, the assessee filed an

appeal to the Commissioner of Income Tax (Appeals). The C.I.T.(A) confirmed the order of the Assessing Officer that the interest income of Rs.

92,06,602/- does not qualify for exemption u/s 10A of the Act and the same to be assessed to tax under the head "income from other sources".

Hence the appeal was dismissed. Aggrieved, the assessee filed an appeal to the Income Tax Appellate Tribunal ("Tribunal" in short). The Tribunal

followed this Court judgment in the case of Commissioner of Income Tax Vs. Menon Impex P. Ltd., and dismissed the appeal filed by the

assessee. Hence the present tax case by the assessee.

3. Learned Counsel appearing for the assessee submitted that the income is attributable to funds derived from export business and the funds were

retained in the bank to meet the exigencies of the business and that the entire transaction constitutes an integrated whole and the same could not be

bifurcated into different areas. It is further submitted that Section 10A of the Act is a beneficial provision and has to be construed liberally and

relied on the Supreme Court judgment in the case of Commissioner of Income Tax, Thiruvananthapuram Vs. Baby Marine Exports, Kollam, .

4. Heard the counsel. In this case, the interest income was earned out of the export realisation and kept in Foreign Currency Deposit Account, as

permitted by FERA under Banking Regulations. Hence, it is clear that there is no direct nexus between the interest earned and the Industrial

Undertaking. The interest received by the assessee is of deposit made by it in the banks. It is that deposit which is the source of income. Therefore

the assessee is not entitled to relief u/s 10A of the Act. In the case of Commissioner of Income Tax Vs. Menon Impex P. Ltd., , this Court

considered the scope of Section 10A of the Act and held as follows:

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.

The Tribunal followed the principles enunciated by this Court's judgment cited supra and came to the correct conclusion that the interest income of

Rs. 92,06,602/- does not qualify for exemption u/s 10A of the Act. Also it is seen from the records that the said amount was assessed under the

head ""income from other sources"". The reasons given by the Tribunal are based on valid materials and evidence and there is a concurrent finding

that it is not the export income and that the said interest was rightly assessed under the head ""income from other sources"". The assessed also had

not brought to our notice any contra judgment or any other valid materials or evidence, to take a different view, except relying on the Supreme

Court judgment in the case of Commissioner of Income Tax, Thiruvananthapuram Vs. Baby Marine Exports, Kollam, , wherein it was held that

exemption and beneficial provisions should be construed liberally. There is no quarrel regarding the proposition and the earlier judgment of this

Court cited supra, had interpreted Section 10A of the Act after hearing the arguments and held that there is no direct nexus between the interest

and the Industrial Undertaking and hence the assessee is not entitled to relief u/s 10A of the Act. In the present case, the assessee received the

export proceeds and the same was deposited in the bank and the income was derived from the said deposit and hence here also there is no direct

nexus between the interest and the Industrial Undertaking. Hence, this Court judgment in the case of Commissioner of Income Tax v. Menon

Impex P. Ltd., cited supra, is squarely applicable to the facts of the present case.

5. Under the circumstances, we find no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial

question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.