
(2008) 08 MAD CK 0101
In the Madras High Court

Rajkumar Impex (P) Ltd.

APPELLANT

Vs

Dy. Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Citation : (2008) 08 MAD CK 0101

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The assessee has filed this appeal against the common order of the Tribunal, dated 27-9-2007, made in ITA Nos. 298/Mad/2004 and 300/Mad/2004. The relevant assessment year is 1999-2000.

2. The appellant is engaged in the business of manufacture and export of cashew kernels from raw cashew. For the assessment year under consideration, the appellant filed its return of income on 10-12-1999, admitting a total income of Rs. 11,99,560. The return was processed u/s 143(1)(a). Subsequently, assessment was reopened u/s 147 after issuance of notice u/s 148 on 15-1-2003. The assessment u/s 143(3) read with Section 147 was completed on 28-3-2003, determining the total income at Rs. 96,60,427. While completing the assessment, the assessing officer denied deduction u/s 80IA in respect of miscellaneous income comprising of export incentives in the form of DEPB license of Rs. 15,27,436 and interest on margin money deposit of Rs. 17,31,444, which is earned out of the deposit made for opening of letter of credit.

3. On appeal, both the Commissioner (Appeals) and the Tribunal confirmed the order of the assessing officer. Aggrieved by the order of the Tribunal, the assessee filed the present appeal by framing the following questions of law:

(i) Whether, on the fact and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction u/s 80IA in respect of DEPB ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction u/s 80IA in respect of interest earned on margin money deposits for opening letter of credit ?

4. We heard the learned Counsel for the appellant and perused the materials available on record.

5. An identical issue came up for consideration before us in the case of Sakthi Footwear v. Asstt. CIT in Tax Case (Appeal) No. 1252 of 2007. In respect of the first question of law, in Sakthi Footwear case (supra), we held as follows:

5. It may be seen that dealing with the inclusion of duty drawback for considering the deduction u/s 80HH, this Court in the decision reported in Commissioner of Income Tax Vs. Jameel Leathers and Uppers, held at p. 102 as follows:

The decision of the Karnataka High Court relied on by the learned Counsel appearing for the assessee in the case of Sterling Foods Vs. Commissioner of Income Tax, did not examine the distinction between the terms "derived from" and "attributable to". It only proceeded on the basis that such income being part of the business income, it must follow that the income is derived from the industrial undertaking.

6. Referring to the decision in National Organic Chemical Industries Ltd. Vs. Collector of Central Excise, Bombay, ; the provision Bench held that the Supreme Court held the word "derived" is usually followed by the word "from", and it means get or trace from a source; arise from, originate in; show the origin or formation of. The Division Bench also followed the decision of this Court in Commissioner of Income Tax Vs. Pandian Chemicals Ltd., .

7. In the said decision, this Court held that profits or gains eligible for deduction u/s 80HH must be derived from the actual conduct of the business. This Court further held that the mandate of law is that unless the source of the profit is the undertaking, the assessee is not eligible to claim deduction u/s 80HH; that mere commercial connection between the income and the industrial undertaking would not be sufficient. This Court held that profits and gains derived from industrial undertaking denotes that the immediate and effective source of income eligible for the grant of relief u/s 80HH must be the industrial undertaking itself and not any other source. The said decision was affirmed by the Apex Court in the decision in Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, , wherein the Supreme Court held that the rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing the rule of liberal construction. In the circumstances, the Apex Court held that the interest derived by the industrial undertaking of the assessee on deposits made with the Electricity Board for the supply of electricity for running the industrial undertaking could not be said to flow directly from industrial undertaking itself and was not profits and gains derived by the undertaking for the purpose of

special deduction u/s 80HH. The Apex Court held that the words "derived from" in Section 80HH must be understood as something which has a direct or immediate nexus with the industrial undertaking. Having regard to the language of Section 80I, in the face of the decisions of the Apex Court which were consistently followed by this Court, we do not find any ground to admit the appeal on the first ground, viz., entitlement of the appellant to deduction u/s 80I in respect of duty drawback.

6. In respect of the second question of law, i.e., the appellant is not entitled to deduction u/s 80I in respect of interest earned on amounts retained by the bank, in the above quoted judgment, para 8 reads as follows:

8. As regards the second question, viz., entitlement of the appellant to deduction u/s 80I in respect of the interest earned on amounts retained by the bank, the learned Counsel for the appellant produced the details regarding the deposits made in the bank to substantiate that they relate to industrial activity. However, deposits do not show that the same is relatable to the interest on the profit by the industrial activity. The deposits admittedly made out of profits are kept in the bank for the convenience of availing further facilities from the background of the same, interest on deposit made would not qualify for deduction u/s 80I. In this connection, this Court, in *Dollar Apparel v. ITO* (2007) 294 ITR 484 (Mad) considered the question as regard the claim of deduction in respect of interest on deposits. This Court again followed the decisions in *K.S. Subbiah Pillai and Co. (India) Pvt. Ltd. Vs. Commissioner of Income Tax*, and *Commissioner of Income Tax Vs. A.S. Nizar Ahmed and Co.*, to reject the claim of the assessee that "even assuming that the deposits were made as a pre-condition of the bank for sanctioning the limit, it could not be considered as income from export earnings, as there was no nexus between export earnings and interest income and the interest income was earned from the deposits and not from the export business." Following the principle laid down in the above-mentioned case on the admitted fact that the deposits were made out of profit income for the purpose of availing further facilities from the bank, we do not find any error in the order of the Tribunal holding that interest income would not qualify for deduction u/s 80I, it being linked for better business prospects and there is no nexus between export earnings and interest income.

7. The above decision squarely covers the issue now raised in this case. In view of the above decision, the questions of law raised in this case having already been answered against the assessee, the above tax case appeals are dismissed. Consequently, connected miscellaneous petition is also dismissed.