
(2013) 08 MAD CK 0096

In the Madras High Court

Case No : Tax Case (Appeal) No. 400 of 2013

The Commissioner of Income Tax

APPELLANT

Vs

M/s. Gemini Communication Ltd.

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Income Tax Act, 1961 — Section 2(29BA), 80HH, 80I, 80IC

Citation : (2013) 357 ITR 759 : (2013) 219 TAXMAN 37

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Ravikumar, for Income Tax, for the Appellant;

Judgement

Chitra Venkataraman, J.—Following is the substantial question of law raised by the Revenue seeking admission of this Tax Case (Appeal)

relating to the assessment year 2006-07:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the disallowance of

deduction of Rs. 8,84,78,097/- made u/s 80IC is to be allowed?

The assessee is engaged in the business of manufacture and service of communication and networking products, mainly to State Government and

Central Government undertakings. It supplied communication device to TNEB and BSNL to the extent of Rs. 37.62 crores, out of the total sale of

Rs. 52.61 crores. In order to comply with the purchase order of Tamil Nadu Electricity Board for decentralization of various collection centres

with the administrative network for the whole State, the assessee is stated to have purchased imported PCBs, RAMs, high and low transmission

wireless adaptors, wireless antennae components, flash ram software, Red Hat

Linux software and other networking components. Using these components, the assessee redesigned, developed and manufactured a single product to suit the requirement of the project. As the end product was a distinct article and a marketable product, the assessee claimed deduction u/s 80IC of the Income Tax Act. The Assessing Officer viewed that the assessee was only doing assembling work and not manufacture and hence, not eligible for deduction u/s 80IC of the Income Tax Act. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

2. It is seen from the order of the Commissioner of Income Tax (Appeals) that the assessee had provisional registration from Himachal Pradesh

State Industrial Development Corporation on 22.8.2005 and it started its manufacturing/production activity from a rented premises in Himachal

Pradesh. The assessee constructed its own factory in the year 2006 and got permanent registration certificate on 12.12.2008. The first Appellate

Authority pointed out that after procuring raw materials and designing the product, on the structured steel panel, an empty chip called E-Prom was

fixed at the designated place. Subsequently, based on the requirements of high or low transmission, wireless adaptor was built in on the structured

steel panel inside the CPU. A software named Red Hat Linux software specifically developed for the TNEB project was then transferred from the

master data to the empty E-Prom chip. This software loaded chip was only allowed to access the frequency with the centralized administration

network of the TNEB and other customers, thus emerged as a distinct and different new product to suit the specific requirement of the particular

customer. The indigenously designed and manufactured product would not be available in the market to any other person. It is stated that in the

course of manufacture, the raw material/inputs used therein underwent several processes and a new commercial product emerged, which was a

distinct and separate commodity, having its own character, use and name.

3. In the background of this, the Commissioner of Income Tax (Appeals), applied the decision of the Apex Court reported in India Cine Agencies

Vs. Commissioner of Income Tax, Madras, as well as the decisions reported in 2002 (11) LCX 0086 (Titan Medical Systems Pvt. Ltd. v.

Commissioner of Customs)and Commissioner of Income Tax-V, New Delhi Vs.

Oracle Software India Ltd.,) and allowed the assessee's appeal on the claim of deduction u/s 80IC of the Income Tax Act.

4. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal, which agreed with the view of the Commissioner of Income Tax (Appeals). Thus, the Revenue's appeal was dismissed. Aggrieved by this, the present appeal has been preferred by the Revenue.

5. Learned Standing Counsel appearing for the Revenue contended that the mere assembling work could not amount to manufacture.

Consequently, the assessee was not entitled for deduction u/s 80IC of the Income Tax Act.

6. We do not find that the contention of the Revenue could be accepted by this Court. It may be of interest to note that u/s 2(29BA) of the Income

Tax Act, under Finance (No. 2) Act of 2009, with effect from 01.04.2009, the definition "manufacture" was inserted to mean, a change in a non-

living physical object or article or thing resulting in transformation of the object or article or thing into a new and distinct object or article or thing

having a different name, character and use; or bringing into existence of a new and distinct object or article or thing with a different chemical

composition or integral structure. Even though the said amendment would not be of relevance to the assessment year under consideration, namely,

2006-2007, yet, the intention of the Revenue being very clear on the scope of the expression "manufacture", on the findings of fact that the various

materials that had gone into making of the radio frequency identification device having thus undergone a change and that they had lost their original

identity, we have no hesitation in confirming the order of the Tribunal. The Revenue has not placed any fresh material either before this Court or

before the Authorities below that the manufactured item was no different from the inputs that were used in bringing out a totally different

marketable product. It may also be pointed out that in the decision reported in India Cine Agencies Vs. Commissioner of Income Tax, Madras,

the Apex Court pointed out that conversion of jumbo rolls of photographic films into small flats and rolls in desired sizes would amount to

manufacture or production, eligible for the benefits u/s 80HH and 80-I of the Income Tax Act. Going by the decision of the Apex Court reported

in Commissioner of Income Tax-V, New Delhi Vs. Oracle Software India Ltd., and

applying the same on the facts found, we have no hesitation in confirming the order of the Tribunal. Hence, we find no question of law arising for consideration to admit this Tax Case (Appeal). Accordingly, this Tax Case (Appeal) stands dismissed. No costs.