IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.2.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).Nos.3 to 5 of 2007

M/s.Dollar Apparels
13, Sixty Feet Road,
Kumaranandapuram, Tirupur. .. Appellant in all T.Cs.

Vs.

The Income Tax Officer,
Ward-I(3), Tirupur. .. Respondent in all T.Cs.

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 15.2.2004 in ITA Nos.2247, 2248 and 2249/Mds/2004 for the assessment years 1997-98, 1998-99 and 2001-02, against the Order of the Cimmissioner of Income Tax (Appeals)II Coimbatore dated 9/7/2004 in ITA No.15-c/03-04, 153-c/03-04, 92-c/04-05 against the Assessment order of the Income Tax Officer Ward I(3) Tirupur.

1. dated 28/3/03 in PAN/GIR No.D-3454
2. dated 22/5/03 in PAN/GIR No.D-3454
3. dated 31/3/04 in PAN/GIR No.D-3454

For Appellant : Mr.R.L.Ramani

For Respondent : Mr.T.Ravi Kumar
Junior Standing Counsel for IT

WEB COPY

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeals have been preferred by the assessee against the common order of the Income-tax Appellate Tribunal in ITA Nos.2247, 2248 and 2249/Mds/2004 dated 15.2.2004, raising the following

https://hcservices.ecourts.gov.in/hcservices/

substantial questions of law:

(1) Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in overlooking the concept of mutuality ?

(2) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in overlooking the fact that in the absence of any "real income" is it permissible to contend that the interest credited is to be set off against interest paid, what is contemplated in Explanation (baa) is, "any other interest/ commission income which are otherwise taxable as "business income" like interest earned from money-lending business etc., and not the interests from these fixed deposits ?

(3) Whether on a correct and proper interpretation of Section 80HHC of the Income Tax Act, 1961 and application thereof to the facts and circumstances of the case, was the Tribunal legally right in holding that the claim for deduction in respect of income from F.D. was not sustainable despite contrary and consistent view having been expressed by the Bombay High Court in the case of C.I.T. vs. Paramount Premises (P) Ltd. (190 ITR 259) and C.I.T. vs. Nagpur Engineering Co. Ltd. (245 ITR 806) against which the S.L.P. of the Department/Revenue stood dismissed as reported in C.I.T. vs. Nagpur Engineering Co. Ltd., (244 ITR (St.) 54) ?"

2. The short facts of the case are : The assessee is a 100% export oriented unit and is exporting the entire goods manufactured to foreign countries without any local sales. Out of the proceeds received through exports, the assessee deposited 5% of the foreign exchange gained with the Canara Bank at the insistence of the bank and also earned interest income over the same. The claim of the assessee was that the said deposits are not made out of surplus funds and the interest income earned on such deposits have a direct nexus with the export business and hence, it should be treated as income from business. But, the assessing officer treated the interest income earned from such deposits as income from other sources. Aggrieved against the same, the assessee went on appeal before the Commissioner of Income-tax (Appeals), who confirmed the order of the assessing officer. On further appeal by the assessee before the Income-tax Appellate Tribunal, the Tribunal held that there is no mutual agreement between the bank and the assessee and that the income derived from the export business alone is eligible for deduction under Section 80HHC and not the incidental income from the export proceeds. The Tribunal, while holding that the deposits made with the Bank are for the convenience and benefit of the assessee with a view to derive higher income, concluded that the assessee is not entitled to deduction under Section 80HHC on the interest income. Hence, the above appeals by the appellant/assessee raising the substantial questions of law, as referred to earlier.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. In K.S.Subbiah Pillai and Co. (India) Pvt. Ltd. vs. Commissioner of Income-tax [(2003) 260 I.T.R. 304], where the issue raised was whether on a true construction of explanation (baa) to Section 80HHC of the Act, interest, rent and commission are to be deducted from export profits or only net receipts, if any, after taking into account the payments, this Court observed as follows:-

> " Clause (baa) under the Explanation to section 80HHC defines profits of the business as computed under the head 'Profits and gains of business or profession'. The deductions to be made are from the amount of profit so computed and not from the amount computed under any other head of income of that assessee. The reference to 'such profits' in sub-clause (1) of clause (baa) can only be to the profits of the business computed under the head 'Profits and gains of business or profession'. Addition to prefix 'the' to 'profits' in clause (baa), while referring to the profits and gains of business or profession makes it clear that it is only the amounts already included in that computation which are now to be reduced to the extent of 90 per cent., if those items are included in sub-clause (1) of that definition. Interest paid and claimed as deduction in the computation of profits and gains for business, cannot be set off against interest received and computed under income from 'other sources'."

4. That apart, in Commissioner of Income-tax v. A.S.Nizar Ahmed and Co. [(2003) 259 I.T.R. 244], where the claim of the assessee, which was a firm doing export business, that the interest received on its deposits with the Bank should be treated as part of the income from business was negatived by the assessing officer, as also by the Commissioner, but was upheld by the Tribunal, on a reference, this Court while answering the question in favour of the Revenue, held as follows:-

> " the interest paid by the assessee to the bank, was no doubt, an item of expenditure in the computation of its business income. That, however, would not justify taking the income that the assessee received by way of interest on the deposits that it had with the bank, as part of its business income when in reality it was not. The deposit made with the bank was for the convenience and benefit of the assessee with a view to derive higher interest income. It was not a deposit made pursuant to any requirement imposed by the bank at the time of sanctioning of the facilities. The bank's decision to extend the facilities was linked more to the business prospects of the assessee and the confidence the bank had in the integrity and entrepreneurial capacity of the partners of the firm who ran the business. "

5. In the instant case, the Tribunal held that the deposits made by the assessee with the bank have no direct link to the sanctioning limit by the bank. Even assuming that the deposits were made as a pre-condition of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the bank for sanctioning the limit, it cannot be considered as income from export earnings, as there is no nexus between export earnings and interest income and the interest income was earned from the deposits and not from the export business. Hence, following the ratio laid down by this Court in K.S.Subbiah Pillai and Co. (India) Pvt. Ltd. vs. Commissioner of Income-tax [(2003) 260 I.T.R. 304] and in Commissioner of Income-tax v. A.S.Nizar Ahmed and Co. [(2003) 259 I.T.R. 244], we hold that the Tribunal was justified in deciding the issues in favour of the Revenue and we do not see any reason to interfere with the findings rendered by the Tribunal with regard to the issues raised in the questions of law referred to above earlier.

Accordingly, finding no question of law that arises for consideration in these appeals, the same stand dismissed. No costs. Consequently, M.P.Nos.2 of 2007 in T.C.(A) Nos.4 and 5 of 2007 are also dismissed.

sra

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "D", Rajaji Bhavan, Besant Nagar, Chennai-90.

2.The Commissioner of Income-
Tax (Appeals)-II, Coimbatore.

3.The Income-tax Officer,
Ward 1(3), Tirupur.

+1 cc to Mr. Murali Kumaran, Advocate Sr.No.10502.

+3 ccs to Mr.K.J.Chandran, Advocate Sr.Nos.10303.

TEJ(CO)
dcp/21.3.07

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/