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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.27 of 2004

The Commissioner of Income Tax
Coimbatore. Appellant

versus

Sri Ramakrishna Mills (Cbe) Ltd.
Coimbatore-641 006. .. Respondent

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 10.7.2003 in I.T.A.No.1909/Mds/1994.

For appellant : Mr.T.Ravi Kumar
Standing Counsel for Income Tax

For respondent : Mr.Venkatnarayanan
for M/s.Subbaraya Iyer

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The following two questions of law are raised in this appeal, relating to the assessment year 1991-92, filed by the Revenue:

(i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that sales tax and excise duty collected by the assessee will not form part of total turnover for the purpose of computation of deduction under Section 80 HHC?

(ii) Whether on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in holding that interest received on deposit with the Tamil Nadu Electricity Board and margin money received for letter of credit formed part of the

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'profits and gains from business' of the industrial undertaking for purposes of computing deduction under Section 80 HH and 80 I?

2. Learned counsel for the Revenue fairly submits that according to a decision of this Court to which one of us is a party (P.D.Dinakaran.J.), reported in 275 ITR 319 (CIT Vs. WHEELS INDIA LTD), sales tax and excise duty collected will not form part of the total turnover for the purpose of working out the relief under Section 80 HHC. The first question is therefore answered against the Revenue.

3. As regards the second question whether the interest received on deposit with the Tamil Nadu Electricity Board and margin money received for letter of credit formed part of the profits and gains from business of the industrial undertaking for the purpose of computing deduction under Section 80 HH and 80 I, the Apex Court held in the decision reported in 262 ITR 278 (PANDIAN CHEMICALS LTD. Vs. CIT), that the word "derived from" in Section 80-HH of the Income Tax Act, 1961, must be understood as something which has direct or immediate nexus with the assessee's industrial undertaking. Referring to the Electricity deposit made with the State Electricity Board for the purpose of getting electricity for industrial undertaking, the Apex Court held that the deposit required for its supply is a step distanced from the business of industrial undertaking. Consequently, the Apex Court held that interest on the deposit made with the Electricity Board could not be said to flow directly from the industrial undertaking itself. In the circumstances, applying the decision of the Apex Court in the said case, the Revenue's contention merits to be accepted.

4. As regards the margin money required for opening Letter of credit, it may be noted that in the decision reported in 257 ITR 60 (CIT Vs. MADRAS MOTORS LTD.), this Court has also considered the interest earned from bank deposits made for obtaining letters of credit. This Court held that there is no direct nexus with the industrial undertaking; hence, not to be taken into account in computing the deduction under Section 80 HH. In the light of the said view already taken, the question has to be answered in favour of the Revenue. The said decision would apply in full force to the relief claimed under Section 80-I also. Consequently, the appeal by the revenue on the second question stands allowed.

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In the result, this appeal preferred by the Revenue stands allowed accordingly. No costs.

Sd/
Asst. Registrar(records)

/true copy/

Sub Asst.Registrar

To:

1. THE ASST REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN III FLOOR,
BESANT NAGAR
CHENNAI-90

2. THE COMMISSIONER OF INCOME TAX
COIMBATORE

3. THE COMMISSIONER OF INCOME TAX(APPEALS)
COIMBATORE

4. THE DEPUTY COMMISIONER OF INCOME TAX
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ksv

Tax Case (Appeal) No.27 of 2004

MJ(CO)

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