IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.10.2007

CORAM

THE HONOURABLE MR. JUSTICE K. RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

TAX CASE NO.344 OF 2004

Deputy Commissioner of Income Tax
Special Range-I, Coimbatore. ... Appellant

Vs.

M/s. Chola Textiles Pvt. Ltd.,
20, Dharapuram Road
Tiruppur - 638 608. ... Respondent

Tax Case Appeal filed against the order of the Income Tax Appellate Tribunal, Chennai `A' Bench, Chennai, dated 12.3.2001 in ITA.No.1265/Mds/93 as against in ITA.No.795-C/92-93 dated 23.2.92 on the file of Commissioner of Income Tax (Appeals) Coimbatore as against in PAN/GIR/No.CQ.2247/SRI/CBE dated 23.12.92 on the file of Deputy Commissioner of Income Tax Spl. range-I, Coimbatore.

For Appellant : Mr. N. Muralikumaran

For Respondent : Mr. Venkatanarayanan
for M/s. SubbarayaAiyar

J U D G M E N T
(Judgment of the Court was delivered by
K. Raviraja Pandian, J.

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The Revenue has filed this appeal against the order of the Income Tax Appellate Tribunal made in ITA.No.1265/Mds/1993, dated 12.3.2001. The relevant assessment year is 1991-1992.

2. The facts as culled out from the statement go as follows:-

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3. We heard the argument of the learned counsel for the Revenue and the learned counsel for the assessee and perused the materials available on record.

The assessee is a closely held company and had filed a return on 27.12.1991 declaring taxable income of Rs.27,79,910/-. Intimation under Section 143(1)(a) was given on 13.1.1992 and the same was rectified under Section 154 of the Income Tax Act on 17.3.1992. Aggrieved by the rectification, the assessee filed an appeal and the same was dismissed by the Commissioner of Income Tax (Appeals) vide order dated 9.7.1992. The assessee claimed deduction under Section 80HH at 20% and 80-I at 25% of the income returned. The Assessing Officer passed orders granting relief under Section 80-I on the gross total income as reduced by deduction under Section 80HH on the view that as per Section 80HH(9) first deduction under Section 80HH was to be given and the balance amount only qualified for deduction under Section 80-I. On appeal, the Commissioner of Income Tax reversed the finding of the Assessing Officer and directed him to quantify the admissible relief under Section 80-I without adjusting the deduction allowed under Section 80HH. The revenue carried the matter on appeal to the Income Tax Appellate Tribunal, which confirmed the orders of the Commissioner of Income Tax (Appeals). The correctness of the order is now canvassed in this appeal by the revenue.

4. At the time of admission, the appeal was admitted on the following substantial questions of law:-

> " i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) that the amount of deduction allowed under Section 80HH is to be reduced from the total income while calculating the admissible deductions under Section 80I of the Income Tax Act?
> ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the deduction under Section 80I without reducing the deduction allowed under Section 80HH?

5. It is submitted across the bar by the learned counsel appearing for either side that the very issue has been considered and held against the revenue by the Madhya Pradesh High Court in the case of J.P.TOBACCO PRODUCTS P.LTD. VS. COMMISSIONER OF INCOME TAX reported in (1998) 229 ITR 123. It has also been further submitted that the Bombay High Court also has taken the same view in the case of COMMISSIONER OF INCOME-TAX VS. NIMA SPECIFIC FAMILY TRUST reported in (2001) 248 ITR 29. The judgment of the Madhya Pradesh High Court has been taken to the Supreme Court and the Supreme Court in JOINT COMMISSIONER OF INCOME-TAX VS. MANDIDEEP ENGINEERING AND PACKAGING INDUSTRIES P.LTD., (2007) 292 ITR 1, has rejected the S.L.P., by giving the following reasons:

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"... 2. The Madhya Pradesh High Court in J.P.Tobacco Products P.Ltd. v. CIT reported in (1998) 229 ITR 123 took the view that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80-I on the gross total income. Against this judgment, a special leave petition was filed in this Court which was dismissed on the ground of delay on July 21, 2000 (see (2000) 245 ITR (St.) 71). The decision in J.P.Tobacco Products P.Ltd. (1998) 229 ITR 123 (MP) was followed by the same High Court in the case of CIT v. Alpine Solvex P.Ltd. in I.T.A.No.92 of 1999 decided on Ma;y 2, 2000. Special leave petition against this was dismissed by this curt on January 12, 2001, (see (2001) 247 ITR (St.) 36). This view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgments. See CIT v. Nima Specific Family Trust reported in (2001) 248 ITR 29 (Bom); CIT v. Chokshi Contacts P.Ltd. (2001) 251 ITR 587 (Raj); CIT v. Amod Stamping (2005) 274 ITR 176 (Guj); CIT v. Mittal Appliances P.Ltd. (2004) 270 ITR 65 (MP); CIT v. Rochiram and Sons (2004) 271 ITR 444 (Raj); CIT v. Prakash Chandra Basant Kumar (2005) 276 ITR 664 (MP); CIT v. S.B.Oil Industries P.Ltd. (2005) 274 ITR 495 (P&H); CIT v. SKG Engineering P.Ltd. (2005) 119 DLT 673 = (2006) 285 ITR 423 (Delhi) and CIT v. Lucky Laboratories Ltd. (2006) 200 CTR 305 (All)

Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions against the judgments of different High Courts following the view taken by the Madhya Pradesh High Court, we do not find any merit in this appeal. The Department having accepted the view taken in those judgments cannot be permitted to take a contrary view in the present case involving the same point. Accordingly, the civil appeal is dismissed. No costs"

6. In view of the decision of the Supreme Court referred to supra, the above tax case appeal is dismissed. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To,

1. Assistant Registrar,
   Income Tax App. Tribunal,
   IIIrd floor, Rajaji Bhavan,
   Besant Nagar, Chennai-90.

2. The Commissioner of Income Tax Appeals,
   Coimbatore.

3. The Deputy Commissioner of Income Tax,
   Spl.Range-I,
   Coimbatore.

+1 cc to Mr.N.Muralikumaran, Sr.S.C.for I.T.(SR.No.61780)

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