

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. : 1268, 1269 & 1270/Mds/2014
निर्धारण वर्ष / Assessment Year : 2007-08, 2008-09 & 2009-10

The Deputy Commissioner of
Income Tax,
Company Circle –I(1),
Chennai – 34.

v. M/s. Arjun Chemicals Pvt. Ltd.,
II Floor, 149 Velachery-Tambaram
High Road, Pallikaranai,
Chennai - 600 100.

(अपीलार्थी/Appellant)

PAN : AAACA5195M
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri Shiva Srinivas, JCIT
: Shri S. Ramamurthy, Advocate

सुनवाई की तारीख/Date of Hearing : 23.01.2017
घोषणा की तारीख/Date of Pronouncement : 23.02.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) – 1, Chennai and pertains to the assessment year 2007-08, 2008-09 and 2009-10. Since common issue arises for consideration in all the appeals, we heard the same together and disposing off the same by this

common order. The only issue arises for consideration is deduction claimed by the assessee under Section 80IB of the Income Tax Act, 1961 (in short 'the Act') in respect of excise duty refund.

2. Shri Shiva Srinivas, the Ld. Departmental Representative submitted that the assessee claimed deduction under Section 80IB of the Act in respect of the excise duty refund. According to the Ld. Departmental Representative excise duty refund was on the basis of the scheme of the Government. Therefore, it is not derived from industrial undertaking. Referring to the Judgment of the Apex court in Liberty India v CIT, 183 taxman 349, the Ld. D.R., submitted that remission of duty, draw back and DEPB was on account of statutory policy under Customs Act and the scheme framed by the Government of India. Therefore, it would not fall within the expression of profit derived from industrial undertaking. Hence, the CIT (Appeals) is not justified in allowing the claim of the assessee.

3. We heard Shri S. Ramamurthy, the Ld. counsel for the assessee also.

4. The Apex court in CIT v Meghalaya Steels Ltd 2016-TIOL-25-SC-IT after considering its earlier judgment in Liberty India Ltd.(*supra*) found

that the expression “derived from” as being something directly from as opposed to “attributable to” which could be said to include something which is indirect as well. Referring to Liberty India, the Apex court found that export incentive which is very far removed from reimbursement of element of cost. DEPB drawback scheme is not related to the business of an industrial undertaking for manufacturing or selling its product. The object beyond DEPB entitlement is to neutralize the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. Referring to the judgment of Calcutta High Court in Merino Ply & Chemicals Ltd v CIT, 209 ITR 508 [1994], the Apex court found that the Calcutta judgment, the legal provisions of the Income Tax Act has been correctly appreciated. In fact, the observation made by the Calcutta High Court was reproduced by the Apex Court. The Calcutta High Court in fact found that transport subsidiary is inseparably connected with the business carried on by the assessee. The assessee has involved in the manufacture of plywood. The assessee put up the unit in the backward area which is entitled for benefit of the scheme. The transport expenditure is incidental expenditure of the business and it is an expenditure which recoups the subsidiary and that the purpose of recoupment is to make up possible profit deficit for operating in the backward area. Therefore, the Calcutta High Court found that the

subsidiaries were inseparably connected with profit of the business. The Apex court further found that subsidiaries are good to reimburse the cost of goods of a particular business would also have to be included under the head profit and gains of the business and not under the head income from other sources. In view of this judgment of the Apex court, this Tribunal is of the considered opinion that the CIT (Appeals) has rightly confirmed the order of the Assessing Officer. Hence, this Tribunal do not find any reason to interfere with the order of the lower authority and the same is confirmed.

4. In the result the appeals of the Revenue stands dismissed.

Order pronounced on 23rd February, 2017 at Chennai.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. Sunder Singh)
लेखा सदस्य/Accountant Member

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 23rd February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai
5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent
4. आयकर आयुक्त/CIT
6. गार्ड फाईल/GF.