IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.2690 of 2006

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

Chemical Specialities India
P. Ltd., New 97, Veeraperumal
Koil St., Mylapore, Chennai. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 7.7.2006 in I.T.A.No.693/Mds/2003 for the assessment year 1997-98 against the order dated 2/12/2002 in ITA 111/2002-03/A-III of the Commissioner of Income Tax (Appeals) III, Chennai - 600 034 against the Deputy Commissioner of Income Tax, Company Circle I(3), Chennai dated 26/3/02 in PAN/GIR/ No.AAACC 3096M.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

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

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in I.T.A.No.693/Mds/2003 dated 7.7.2006.

2. The Revenue is the appellant. The above appeal relates to the assessment year 1997-98. While completing the re-assessment, the assessing officer, holding that the assessee's computation of deduction under Section 80 HHC was not based on profit from business as per the consolidated Profit and Loss Account from all the business, but based on the export profit of the export unit vide separate P & L Account filed with respect to the export division, re-calculated the benefit after including the turnover relating to the business of the industrial

paints, trading in chemicals, manufacturing and export of leather garments in the total turnover. Aggrieved by the said order of assessment, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who allowed the appeal, against which, the Revenue went on appeal before the Tribunal and the Tribunal also confirmed the order of the Commissioner and dismissed the appeal filed by the Revenue.

3. Hence, the present appeal by the Revenue raising the following substantial question of law:-

> "Whether in the facts and circumstances of the case, the Tribunal was right in excluding the turnover relating to the business of manufacturing of industrial paints and trading in chemicals from the total turnover while computing the deduction under section 80 HHC when the assessee had filed a consolidated Profit and Loss Account in respect of the above mentioned business and the export business ?"

4. Mr.J.Narayanaswamy, learned standing counsel appearing for the Revenue, fairly submits that the issue raised in the above question is squarely covered against the Revenue by the decision of this Court in Commissioner of Income-tax Vs. Madras Motors Ltd./M.M. Forgings Ltd [(2002) 257 I.T.R. 60], wherein this Court held as follows:-

> ".. the thrust of the opening clause of clause (b) of sub-section (3) of section 80HHC of the Act, has a stress on the words "does not consist exclusively of the export". The words "total turnover of the business" would be controlled by and have to be read in the colour of the opening clause. The sub-section has been created only to see the ratio of the income out of the export to the total income out of the business in respect of those goods because of the obvious difficulty of segregating the profits earned out of export alone. The total turnover of the business would contemplate only the business regarding such goods part of which are exported and the others are not so exported. Hence, it is impermissible to apply the section even to goods which are outside the limits of clause (a) of sub-section (2)."
>
> ...
>
> " the turnover from the business of sale of motorcycles, motorcycle spare parts and television sets could not be included in the total turnover of the assessee for the purposes of the computation of special deduction under section 80HHC. The Tribunal was right in holding that the total turnover in section 80HHC was only the turnover relating to export business of the assessee and not the turnover relating to other business of the assessee."

In view of the above settled proposition, we find no question of law much less a substantial question of law that arises for our consideration. Accordingly, the tax case appeal is dismissed.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "A", Chennai,
Besant Nagar III Floor,
Chennai-90.

2.The Commissioner of Income Tax
(Appeals), Chennai-34.

3.The Deputy Commissioner of Income-tax
Company Circle I(3), Chennai-34.

4.The Commissioner of Income Tax,
Chennai-34.

T.C.(A).No.2690 of 200

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