Principal Commissioner Of Income Tax 4 vs M/S. Linea Fashions (India) Pvt. Ltd

ID: F2J-C-2619 **Court:** Madras High Court
Case: TAX CASE APPEAL No. 4 of 2017 **Date:** 2017-01-04

Madras High Court Principal Commissioner Of Income Tax 4 vs M/S. Linea Fashions (India) Pvt. Ltd on 4 January, 2017 Author: Anita Sumanth Bench: Huluvadi G.Ramesh, Anita Sumanth

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated:04.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH

AND

The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL No. 4 of 2017

Principal Commissioner of Income Tax 4, No.121, Mahatma Gandhi Road, Chennai 600 034 .. Appellant

Versus

M/s. Linea Fashions (India) Pvt. Ltd., SDF-III, Unit Nos.47-57 and 69-79, MEPZ, Tambaram, Chennai 600 045 .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 29.4.2016 passed in I.T.A.No.565/Mds/2014 for the assessment year 2006-07.

For Appellant .. Mr.T.R.Senthil Kumar

JUDGMENT

(Judgment of the Court was delivered by Anita Sumanth, J.) This Appeal challenges an order of the Income Tax Appellate Tribunal for the assessment year 2006-07 raising the following substantial questions of law:

'1. Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in holding that reimbursement of interest received from Ministry of Textiles, Government of India under Technology Upgradation Fund Scheme TUFS is derived from export of articles or things so as to qualify for deduction u/s10B of the Income Tax Act?

2. Whether on the facts and circumstances of the case and in law, Tribunal was correct and justified in holding that reimbursement of interest received under TUFS is eligible for deduction u/s10B overlooking the fact that it was not derived from the export activity and instead arose from a Scheme of Government of India and has no nexus with the export activity?'

2. The admitted facts are that the Assessee is engaged in the manufacture and export of textile garments and claims relief under section 10A of the Income Tax Act (in short 'Act'). The Government of India had initiated a Scheme to encourage investment in Textile units, specifically in the area of technology upgradation. The Scheme, called the Technology Upgradation Fund Scheme (TUFS), provided that the Ministry of Textiles would reimburse 5% of the interest paid by the Assessee on loans availed from identified banks/financial institutions for a period of 5 years.

3. In the financial year relevant to Assessment year 2006-07, the Assessee received a sum of Rs.74.37 lakhs from the Ministry of Textiles in accordance with the TUFS that was reduced from total interest and finance charges in arriving at the taxable income. The amount was thus included in the claim under Section 10A. This was accepted by the Assessing Officer in order of assessment dated 11.12.2008. The aforesaid order of assessment was subject to suo motu revision under section 263 of the Act by the Commissioner of Income Tax vide order dated 30.12.2010. The Commissioner was of the view that the interest income was not eligible for relief under Section 10 A of the Act, in view of the judgments of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd V. CIT (113 ITR 84), CIT v. Sterling Foods (237 ITR 579) and CIT V. Menon Impex Ltd. (259 ITR 403). Accordingly, the order of assessment was set aside and the Assessing Officer directed to pass an order in accordance with law.

4. Thereafter, the Assessing Officer passed an order dated 30.09.2011 in accordance with the directions of the Commissioner of Income Tax denying the claim of the Assessee, that was challenged in appeal before the Commissioner of Income Tax (Appeals), who, vide order dated 22.11.2013, confirmed the order of assessment .

5. In further appeal, the Income Tax Appellate Tribunal, after adverting to the specific ingredients of the scheme, noted that the loan was specifically availed for purchase of new machinery for upgradation of technology and has actually been expended for the stated purpose. Alternative to the claim of relief under Section 10A with respect to the income from the TUFS, the Assessee claimed that the reimbursement of income of 5% under the TUFS constituted a capital receipt, not liable to tax.

6. The Tribunal, in conclusion, accepted the claim of the Assessee that the reimbursement of interest of 5% by the Government would increase the profit on export sales eligible for deduction under section 10A of the Act. The appeal was allowed. Assailing the above order of the Tribunal, the Revenue is in appeal before us.

7. We have heard Mr.T.R.Senthilkumar, learned counsel appearing for the Revenue.

8. Admittedly, the Assessee availed a loan from ING Vysya Bank of an amount of Rs.6.44 Crores for investment in machinery as a measure to upgrade technology in the textile unit. It also received reimbursement of 5% of the interest as per the terms of the TUFS. The Assessee, thus, satisfied the requirements of the Scheme. Also and in fact, the garments manufactured have been exported.

9. In the light of the factual matrix as noticed by us, we are of the view that the Tribunal, in allowing the appeal, has considered and decided the matter in the proper perspective. The Assessee is a 100% Export Oriented Undertaking and is admittedly, engaged solely in the activity of export. The benefit of reimbursement obtained by the Assessee would result in the increase of profit on export sales and the relief granted in terms of Section 10B would, consequently, stand increased to that extent. The special benefit provided to the Assessee by way of TUFS is directly relatable to the eligible activity engaged in by the Assessee, in this case, the manufacture and export of textile garments.

10. The ingredients of the TUFS have been noticed in the orders of the lower authorities and the Objective and Resolution of the Scheme are as under:

(To be published in the Gazette of India Extraordinary Part I Section 1 of 31st March 1999) MINISTRY OF TEXTILES RESOLUTION No. 28/1/99-CTI New Delhi. the 31st Mardi, 1999.

Objective:

The Indian textile industry occupies a unique position in the Indian economy in terms of its contribution to industrial production, employment and exports. In spite of a strong fibre and production base, fro various historical reasons, this industry suffers from severe technological obsolescence and lack of economies of scale. While relatively high cost of state-of-the-art technology and structural anomalies in the industry have been major contributory factors, perhaps the singlemost important factor inhibiting technology upgradation has been the relatively high cost of capital, even in real terms, in India, especially for an industry usually squeezed for margins. Given the significance of this industry to the overall health of the indian economy, its employment potential and the huge historical backlog of technology upgradation, particularly in the context of globalisation of textile trade, it has been emphasised by experts that in order to sustain and improve its competitiveness and overall long term viability, it is essential for the textile industry to have access to timely and adequate capital at internationally comparable rates of interest in order to upgrade its technology level.

In the light of the foregoing, it has been felt necessary to make operational a focussed and time-bound Technology Upgradation Fund Scheme (TUFS) which would provide a focal point for modernisation efforts through technology upgradation in the industry. The main feature of the TUF Scheme would be a five percent reimbursement on the interest actually charged by the identified financial institutions on the sanctioned projects.

Resolution:

It is, therefore, resolved that a Technology Upgradation Fund Scheme be made operational for the textile, jute and cotton ginning & pressing industries for five years with effect from the 1st of April, 1999. The scheme will provide a reimbursement of five percentage points on the interest charged by the lending agency on a project of technology.■

11. The avowed object of the scheme cannot be lost sight of when deciding the nexus that the reimbursement has to the activity carried on by the assessee. In the light of the provisions of the scheme extracted above, we conclude that the income reimbursed in terms of the TUFS has a direct nexus with the export activity engaged in by the assessee.

12. We may refer, in this regard, to the decision of the Bombay High Court in the case of CIT V. Punit Commercial ((2001) 245 ITR 550), extracted below, that, though rendered in the context of Section 80HHC of the Act, would be equally applicable in the present context. In the statement of facts vide para. 4(a), it is mentioned that the assessing officer has treated the interest income as income from other sources whereas the impugned judgment and the order of the assessing officer proceed on the footing that the interest income was business income, but it was not an income from exports (see para. 2 of the impugned judgment of the Tribunal). Hence, we refuse to go into the larger questions of law canvassed by the learned counsel for the department. Suffice it to say that in this matter, the Assessee is a 100 per cent. exporter. In this case, section 80HHC(3)(a) is applicable as the Assessee is a 100 per cent exporter. Hence, the entire business income is deemed to be profit derived from export of goods. Therefore, the interest income could only fall under "business income". Section 80HHC(3)(a) deals with a 100 per cent. exporter whereas section 80HHC(3)(b) deals with composite business. In the latter case, local sales are included. Hence, the entire profits are entitled to deduction. This would include interest income also.

13. In view of the above discussion, the substantial questions of law are decided against the Revenue and in favour of the Assessee. No costs. (H.G.R.,J) (A.S.M.,J) 23.01.2017 Speaking order/non-speaking order Index:Yes/No msr/sl

HULUVADI G. RAMESH, J.

& DR.ANITA SUMANTH, J. msr/sl

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23.01.2017