



* IN THE HIGH COURT OF DELHI AT NEW DELHI

#23

+ ITA 730/2010

ROYAL EXPORTS Appellant

Through Mr. R.M. Mehta, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ... Respondent

Through Ms. Sonia Mathur, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

ORDER

% 12.07.2010

CM Nos.10223 & 10224/2010 (exemption)

Allowed, subject to all just exceptions.

ITA No. 730/2010

This is an appeal under Section 260A of the Income Tax Act, 1961 assailing the order passed by the Income Tax Appellate Tribunal, Delhi Bench (for short 'the tribunal) in ITA No. 2402/DEL/2008 for the Assessment Year 2004-05.

The substantial question of law that arises in this appeal for adjudication is as follows:

1. Whether the tribunal was justified in expressing the view that in all circumstances interest received from the FDR, the assessee would not be entitled to deduction under Section 10A of the Act?

Mr. R.M.Mehta, learned counsel for the assessee appellant that the assessee



had claimed deduction in respect of Rs.8,35,507/- having received the same towards interest on the FDR as it is engaged in export of jewelry and that the amount was kept in fixed deposit in pursuance of the terms and conditions of the contract and therefore, it had nexus with the business that was carried on by the assessee and therefore, Section 10A of the Act is attracted. Learned counsel for the assessee submitted that the tribunal has not addressed itself with regard to the nexus part of it and has expressed the view that any amount that is received towards interest on FDR the assessee is not entitled to deduction. To bolster the said submission, he has commended us to the decisions rendered in *CIT vs. Excellent Commercial Enterprises and Investments Ltd.*, 282 ITR 423, *CIT vs. Koshika Telecom Ltd.*, 287 ITR 479 and *Commissioner of Income-Tax vs. Production (P.) Ltd.*, [2010] 191 TAXMAN 79 (SC).

Ms. Sonia Mathur, learned counsel for the revenue submitted that there is a distinction between profits attributable to an industrial undertaking and profits derived from an industrial undertaking in the backdrop of grant of benefit. To buttress the said submission, she has placed reliance upon *Liberty India vs. Commissioner of Income-Tax*, [2009] 317 ITR 218 (SC).

To appreciate the rival submissions raised at the Bar, we have carefully perused the order passed by the tribunal. It is urged by Mr. Mehta that the law has been stated in the broadest manner by the tribunal without analysing the facts. In *Commissioner of Income-Tax vs. Production (P.) Ltd.* (supra) the Apex Court



while dealing with the interest income receipt by the assessee therein on short term fixed deposit and its character expressed the view as follows:

“4. In view of the absence of factual matrix we are of the view that to decide the question as to whether the receipt fell under Section 28 or under Section 56 the matter needs to be remitted to the Tribunal for fresh consideration in accordance with law.”

It is true that the said decision was rendered under a different provision for the fact remains if an income is received from the interest on the FDR and it has some nexus with the industrial undertaking or business undertaking it can be viewed or scrutinized differently.

In view of the aforesaid, we set aside the order passed by the tribunal and remand it for fresh adjudication whereby the tribunal shall take the factual scenario into consideration and the law in the field and pass an apposite reasoned order.

We hereby clarify that we have not expressed any opinion on the merits on any of the averments made but only remitted as the factual matrix has not been delved into by the tribunal at all.

In the result, the appeal is allowed to the extent indicated above without any order as to costs.


CHIEF JUSTICE


MANMOHAN, J

JULY 12, 2010/dk
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