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(Common order)

%21.07.2011

Present: Mr. Abhishek Maratha, Sr. Standing Counsel for the Appellant

+ITA Nos. 865/2011 and 866/2011

These appeals relate to two assessment years but the issue involved is common and therefore, we can conveniently take the facts pertaining to assessment year 2002-2003.

In this assessment year, the assessee had filed a return of income declaring 'NIL' income since it is 100% Export Oriented Unit (EOU) engaged in the business of manufacturing and export of gold jewellery in Noida Special Economic Zone (Noida-SEZ). The assessee claimed exemption under Section 10A of the Act. There is no dispute that assessee is entitled to this exemption. The business profits which were earned by the assessee during this year were to the tune of Rs. 59,00,324/- and the Assessing Officer has allowed the exemption.

Thereafter, however, the case was reopened by issuing notice under Section 148 of the Act when it was found that the assessee had also earned interest income on FDR but this income was not shown as income from other sources but even in respect thereof, exemption was claimed. The Assessing Officer, in these circumstances, treated the aforesaid income as interest income in the assessment order passed by the Assessing Officer and the same be treated as income from other sources and is liable for tax.

12

In the appeal preferred by the assessee, against this order, CIT (A) allowed the same. The Revenue challenged the order of the CIT(A) before the ITAT contending that interest income on FDR is to be treated as income from other sources and this is liable for tax. This contention of the Revenue has been accepted by the Income Tax Appellate Tribunal following its earlier order in the case of this very assessment year. It was also the contention of the departmental representative before the Tribunal that if the income is to be allowed after deducting the expenses incurred on the aforesaid interest income under Section 57(iii) of the Income Tax Act, that was recorded to be quantified by the CIT(A) which has not been done. Finding this to be factually correct, the Tribunal has remanded the matter back to the Assessing Officer for a limited purpose of determining the allowable deduction strictly in the manner provided under Section 57(iii) of the Act, after giving opportunity of hearing to the assessee.

We fail to understand as to how income tax department is aggrieved by the aforesaid order which has gone in its favour and which prompted the department to file the instant appeals. Merely, on some uncalled for apprehensions nurturing in the mind of certain officials of the department, such a move to file an appeal under Section 260A of the Income Tax Act, which appeals are to be entertained only on substantial question of law, is highly depreciable and has to be denounced.

(3)

It is obvious that burden lies on the assessee to prove that it has incurred expenditure and if the assessee is not able to prove the same, the Assessing Officer may pass appropriate orders.

For these reasons, we dismiss these appeals with costs of Rs. 5,000/- each to be paid by the Appellant within two weeks in favour of Delhi High Court Legal Services Committee.

A.K.SIKRI, J.

M.L.MEHTA, J.

JULY 21, 2011
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