

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR. JUSTICE DILIP B BHOSALE

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA.NO.756/2007

BETWEEN

1. THE COMMISSONER OF INCOME TAX
CENTRAL CIRCLE, C R BUILDING
QUEENS ROAD, BANGALORE
2. THE JOINT COMMISSIONER OF INCOME TAX
SPECIAL RANGE-3, C.R. BUILDING
QUEENS ROAD, BANGALORE ... APPELLANTS

(BY SRI K V ARAVIND, ADV.,)

AND

M/S. MOTOR INDUSTRIES CO LTD
HCSUR ROAD, ADUGODI
BANGALORE-30 ... RESPONDENT

(BY SRI MISS TANMAYEE RAJKUMAR, ADV., FOR M/S KING &
PARTRIDGE)

THIS ITA FILED U/S 260-A OF I.T.ACT, 1961 ARISING OUT OF
ORDER DATED 04/05/2007 PASSED IN ITA.NO.2746/BANG/2004, FOR
THE ASSESSMENT YEAR 1998-99, PRAYING TO I. FORMULATE THE
SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE
APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT,
BANGALORE IN ITA NO.2746/BANG/2004 DATED 04/05/2007
CONFIRMING THE ORDER PASSED BY THE APPELLATE COMMISSIONER

AND CONFIRM THE ORDER PASSED BY THE JOINT COMMISSIONER OF INCOME TAX, SPECIAL RANGE-3, BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR HEARING, THIS DAY, *Dilip B. Bhosale J.* DELIVERED THE FOLLOWING:

PC:

This income tax appeal is directed against the order dated 04.05.2007 rendered by Income Tax Appellate Tribunal, Bangalore Bench "B" (for short "the Tribunal") in ITA No.2746/2004 for the assessment year 1998-99 whereby the Tribunal had partly allowed the appeal filed by the revenue. The appeal before the Tribunal was directed against the order passed by the Commissioner of Income Tax (Appeals)-III, Bangalore (for short "the Appellate Authority or AA") dated 05.07.2004 in ITA No.190/DCIT, C-12(1)CIT(A)III/01-02, whereby the AA had partly allowed the appeal filed by the assessee against the order passed by the Assessing Officer dated 30.03.2001.

2. This appeal was admitted to consider the substantial questions of law as formulated in paragraph

Nos.4, 5 and 6 of the memorandum of appeal. The substantial questions of law read thus:

- i. Whether the Appellate Authorities were correct in holding that the assessee is entitled to claim deduction in respect of contribution made to benevolent funds despite the assessee not demonstrating the compulsion to undergo this expense as per the provisions of the Act?
- ii. Whether the Appellate Authorities were correct in holding that the receipts from the sale of scrap is required to be excluded from the turnover for the purpose of computing deduction under Section 80HHC and 80HHE of the Act?
- iii. Whether the Appellate Authorities were correct in holding that 90% development fee should not be deducted from the profits of business for the purpose of computing deduction under Section 80HHC and 80HHE of the Act?"

3. Learned counsel for the respondent-assessee, at the outset, invited our attention to the order passed by this Court dated 02.11.2007 in ITA No.3 of 2002. The question of law that was framed therein reads thus:

- 1) Whether the appellate authorities are correct in holding that the contribution made by the assessee/employer towards the Benevolent fund created in favour of the employee is entitled to deduction under Section 40A(9) of the Act despite there being no compulsion under any other law as

contemplated under the section for making such a contribution?

4. The Division Bench, for the reasons recorded in paragraph-7 of the order dated 20.11.2007 answered the said question in favour of the assessee and against the revenue. In view thereof, learned counsel for the respondent prayed for answering the first substantial question of law framed in the present appeal in favour of the assessee and against the revenue.

5. Learned counsel for the appellants-revenue did not dispute the submission advanced by learned counsel for the respondent. Hence, we answer the first question in favour of the assessee and against the appellant in terms of the judgment dated 02.11.2007 passed in ITA No.3/2002.

6. Insofar as the second question is concerned, learned counsel for the appellants-revenue submitted that it is squarely covered by the judgment of this Court dated 10.12.2009 in ITA No.27/2005 whereby the said question

has been answered in favour of the revenue and against the assessee. Having confronted with this, learned counsel appearing for the assessee did not dispute the submission made by learned counsel for the appellants-revenue.

7. We have perused the judgment dated 10.12.2009 in ITA No.27/2005 and in paragraph-8 thereof the question that was framed by the Division Bench, which is similar to the second question in the present appeal, reads thus:

"3) Whether the Tribunal was correct in holding that excise duty, sales tax and scrap sales are not includible in the total turnover for the purpose of deduction under section 80HHC and 80HHE of the Act.?"

For the reasons recorded in paragraph-8, the Division Bench answered the said question in favour of revenue and against the assessee.

8. Learned counsel for the respondent-assessee did not dispute the legal position as reflected in paragraph-8 of the judgment dated 10.12.2009. In the

circumstances, we answer the second question in favour of the revenue and against the assessee in terms of the judgment dated 10.12.2009 in ITA No.27/2005.

9. This Court is informed that even the third question raised in the present appeal can also be answered in favour of the assessee in terms of the judgment dated 04.08.2010 in ITA No.28/2005. The question framed in ITA No.28/2005, which is similar to the third question in the present appeal, reads thus:

"Whether the income received by the Assessee towards developmental work in the course of its export business which is different from the income arising out of the business of export out of India of any goods or merchandise, is liable be reduced by 90% as provided under clause(1) of (baa) of Section 80HHC of the Act?"

10. The Division Bench answered the said question in favour of the assessee for the reasons recorded in the judgment dated 04.08.2010. In view thereof, learned counsel for the respondent-assessee prayed for deciding the said question in favour of the assessee.

11. Mr.K.V.Aravind, learned counsel appearing for the revenue did not dispute the submission advanced by learned counsel for the respondent-assessee. Hence, we answer the third question in favour of the assessee and against the revenue in terms of the judgment dated 04.08.2010 in ITA 28/2005.

The appeal is accordingly disposed of. No costs.

Sd/-
JUDGE

Sd/-
JUDGE

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