

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF APRIL, 2010

PRESENT

THE HON'BLE MR. JUSTICE K.L. MANJUNATH

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

I.T.A.No.3112/2005

BETWEEN:

M/S GREEN AGRO PACK (P) LTD.,
No.2821, HAL II STAGE
6TH CROSS, 18TH MAIN,
BANGALORE 560 008,
REPRESENTED BY ITS DIRECTOR,
SATHI PRABHAKAR

... APPELLANT

(BY SRI K.P KUMAR, SR. ADVOCATE
FOR SRI ATUL K ALUR, ADVOCATE)

AND:

1. THE COMMISSIONER OF INCOME-TAX,
C.R. BUILDING, QUEENS ROAD,
BANGALORE.
2. THE DT. COMMISSIONER OF
INCOME-TAX, CIRCLE-4(3),
KORAMANGALA,
BANGALORE.

(BY SRI K.V.ARAVIND, ADVOCATE)

... RESPONDENTS

THIS I.T.A. IS FILED U/S 260-A OF I.T.ACT, 1961 ARISING OUT
OF ORDER DATED 12.08.2005 PASSED IN I.T.A. No.778/BANG/2002
FOR THE ASSESSMENT YEAR 1998-99, PRAYING THAT THIS HON'BLE




COURT MAY BE PLEASED TO (i) FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED HEREIN; AND ETC.

THIS I.T.A COMING ON FOR HEARING THIS DAY, **NAGARATHNA J**, DELIVERED THE FOLLOWING:

J U D G M E N T

The Assessee has preferred this appeal by challenging the order, dated 12.08.2005 passed in I.T.A.No. 778/Bang/2002 by raising several substantial questions of law. When the appeal came to be admitted, the following substantial questions of law were framed by this Court by an order dated 29.05.2006:

- i) Whether on the facts and circumstances of this case the tribunal was correct in withdrawing the claim of deduction under Sec.10-B of the Income Tax Act?
- ii) Whether on the facts and circumstances of this case the interest received on FD can be brought under the head 'Income from other sources'?
- iii) Whether on the facts and circumstances of this case, the tribunal was right in treating the interest as an income from other sources? 

2. The relevant facts of the case are that the appellant Assessee which is a company and a 100% Export Oriented Unit is engaged in export of processed gherkins having its factory near Davanagere. For the assessment year 1998-99, it filed its return of income claiming exemption under Section 10B of the Income Tax Act 1961 and the same was accepted by the Assessing Officer by intimation dated 21.10.1999. Subsequently, notice under Section 154 of the Act was issued to the appellant so as to make rectification of intimation dated 21.10.1999, in fact, with regard to the nature of the source of income i.e. the interest income earned by fixed deposits and as to whether the said income was a business income of the Assessee based on an audit objection. The Assessing Officer did not accept the contention of the Assessee that the assessment order could not be rectified and that the interest earned on the fixed deposit was closely connected with the business of the assessee and was business income and accordingly held that it has to be treated as income from other source thereby raised a demand



of Rs.39,586/-. Being aggrieved by the said order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) which was however dismissed, against which the Assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal also confirmed the order of the authorities below and being aggrieved by the said order, the present appeal has been filed.

3. We have heard the learned Sr. Counsel on behalf of the appellant and the learned counsel for the respondent and perused the material on record.

4. It is contended on behalf of the appellant that the interest obtained out of the fixed deposit was on account of the deposit being made for obtaining letter of credit or for bank guarantee and was for business purposes and out of the business compulsions and that the said interest was not on account of any surplus fund being deposited in fixed deposit so as to earn interest on the said deposit and the authorities have failed to appreciate these aspects of the matter and



treated the said income as income from other sources. He has also relied upon two decisions of this Court to contend that when on account of certain business compulsions the amount has to be kept in a fixed deposit which earns interest, then the same has to be treated as business income and not income from other sources.

5. Per contra, learned counsel for the Revenue supporting the order of the Tribunal and other authorities has submitted that no substantial question of law arises in this appeal and therefore the appeal has to be dismissed.

6. Having heard the learned counsel on both the sides and on perusal of the material on record, it is not in dispute that the appellant is a 100% Export Oriented Unit which is engaged in export of processed gherkins and during the course of its business it would have to make certain deposits for the purpose of obtaining letter of credit or for bank guarantee when the products which are processed by it have to be exported. In terms of the said letter of credit or bank

2

guarantee, certain deposits are made and such deposits are to be treated as margin amounts and any interest which is earned out of the said deposits has to be treated as business income and not as income earned from other sources. In this context, it would be apposite to refer to two decisions of this Court rendered in **I.T.A.No.426/2002** in the case of **M/s Hajeer Jaffar Shariff v. The Income Tax Officer**, disposed of on 12.11.2007, wherein it has been held that when money is invested in fixed deposit to get the benefit of letter of credit and not to invest the same to earn any interest, then the said interest amount earned on the deposit has to be treated as the business income and not as income earned from other sources.

7. Similarly, in the case of **Satishchandra and Co. v. Commissioner of Income Tax**, reported in **Vol.234 ITR 1998 page 70**, it has been held that merely because the Assessee has shown any income by way of interest, it would not become income from other sources as it has to be seen as



to whether the said interest was earned out of business compulsion and as a business income. When in the said case, the Assessee has made deposit in a bank as a condition for obtaining bank guarantee to be given before the Excise Authorities as required under the Excise Rules, the interest income which arose out of such transaction was held to be closely connected with the business of the Assessee and hence business income. If the income is assessable as business income then the mere circumstance that the Assessee has shown it has income from other sources or that it was assessed under the head income from other sources would not be the ground to deny the Assessee the set off of the carried forward losses. The said decision is also relevant keeping in mind the facts of the present case where the Assessee being an Export Oriented Unit had deposited the said funds as margin money for the purpose of carrying on its export business.

8. Therefore the substantial questions of law raised in this appeal have to be answered in favour of the Assessee and against the Revenue. Accordingly the appeal is allowed.

Sd/-
JUDGE

Sd/-
JUDGE

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