Madras High Court
Madras High Court
Commissioner Of Income Tax-I vs M/S. Emerald Jewel Industry P. Ltd on 10 August, 2010
Dated : 10.08.2010

Coram :-

THE HON'BLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

and

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

Tax Case (Appeal) No.715 of 2010

Commissioner of Income Tax-I

Coimbatore. .. Appellant

vs.

M/s. Emerald Jewel Industry P. Ltd.

333, Second Floor, Big Bazaar Street

Coimbatore 641001. .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 27.11.2009 passed in I.T.A.No.909/Mds/2009. For Appellant : Mr.J.Naresh Kumar

Standing Counsel for Income-tax

Judgment

(Judgment of the Court was delivered by

F.M.IBRAHIM KALIFULLA,J.)

The Revenue has come forward with this appeal raising the following questions of law to be examined as substantial nature in this appeal: "1. Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the assessee company is eligible for deduction under section 80IA in respect of Wind Mill installed by it and if so, whether the unabsorbed depreciation of the earlier years to be reduced from profits for computing deduction under section 80IA of the Income-tax Act, is valid?

2. Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in not following the decision of the special Bench in the case of Gold Mine Shares & Finance P. Ltd. reported in 302 ITR (AT) 208 (Ahamedabad) which directly applicable to the facts of this case?

2. It was fairly brought to our notice that in the decision reported in (2010) 231 CTR (Mad) 368 (Velayudhaswamy Spinning Mills (P) Ltd. vs. Assistant Commissioner of Income-tax), these very questions have been dealt with and answered against the Revenue. In fact, in the said reported decision, Tax Case (Appeal) Nos.909 and 940 of 2009 and 908 of 2008 were disposed of by common order. Among other questions of law, questions of law raised therein were as under: "c. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in saying that unabsorbed depreciation of earlier years before the first year of claim, which has already been absorbed, could be notionally carried forward and taken into consideration for computation of deduction under Section 80 IA? d. Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in following the decision of the Special Bench in the case of Goldmine Shares and Finance Pvt. Ltd. when admittedly the said decision was rendered prior to the amendment to section 80-IA by Finance Act, 1999?"

3. While answering the said questions, the Division Bench even after making a reference to the decision relating to Goldmine Shares and Finance (P) Ltd., however chose to follow the decision of the Rajasthan High Court in CIT vs. Mewar Oil and General Mills Ltd. [(2004) 271 ITR 311 (Raj)] and has held as under: "14. In the present cases, there is no dispute that loss incurred by the assessee were already set off and adjusted against the profits of the earlier years. During the relevant assessment year, the assessee exercised the option under Section 80-IA(2). In Tax Case Nos.909 of 2009 as well as 940 of 2009, the assessment year was 2005-2006 and in the Tax Case No.918 of 2008 the assessment year was 2004-2005. During the relevant period, there were no unabsorbed depreciation or loss of the eligible undertakings and the same were already absorbed in the earlier years. There is a positive profit during the year. The unreported judgment of this Court cited supra considered the scope of sub-section 6 of Section 80I, which is the corresponding provision of sub-section 5 of Section 80-IA. Both are similarly worded and therefore we agree entirely with the Division Bench judgment of this Court cited supra. In the case of COMMISSIONER OF INCOME TAX V. MEWAR OIL AND GENERAL MILLS LTD., reported in 271 ITR 311 the Rajasthan High Court also considered the scope of Section 80I and held as follows: "Having considered the rival contentions which follow on the line noticed above, we are of the opinion that on finding the fact that there was no carry forward losses of 1983-84, which could be set off against the income of the current assessment year 1984-85, the re-computation of income from the new industrial undertaking by setting off the carry forward of unabsorbed depreciation or depreciation allowance from previous year did not simply arise and on the finding of fact noticed by the Commissioner of Income-tax (Appeals), which has not been disturbed by the Tribunal and challenged before us, there was no error much less any error apparent on the face of the record which could be rectified. That question would have been germane only if there would have been carry forward of unabsorbed depreciation and unabsorbed development rebate or any other unabsorbed losses of the previous year arising out of the priority industry and whether it was required to be set off against the income of the current year. It is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under Section 80-I for the purpose of computing admissible deductions thereunder. In view thereof, we are of the opinion that the Tribunal has not erred in holding that there was no rectification possible under section 80-I in the present case, albeit, for reasons somewhat different from those which prevailed with the Tribunal. There being no carry forward of allowable deductions under the head depreciation or development rebate which needed to be absorbed against the income of the current year and, therefore, re-computation of income for the purpose of computing permissible deduction under section 80-I for the new industrial undertaking was not required in the present case. Accordingly, this appeal fails and is hereby dismissed with no order as to costs."

From reading of the above, the Rajasthan High Court held that it is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under Section 80-I for the purpose of computing admissible deductions thereunder. We also agree with the same. We see no reason to take a different view."

4. The Division Bench further proceeded to hold as under:

"15. ... We are not agreeing with the counsel for the revenue. We are, therefore of the view that loss in the year earlier to initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of the eligible business as no such mandate provided in the Section 80-IA(5).

16. Under these circumstances, we set aside the order of the Appellate Tribunal and answer all the questions in favour of the appellant/assessee and against the revenue in T.C.Nos.909 and 940 of 2009 respectively. Accordingly, tax cases are allowed."

5. Having regard to the said decision of the Division Bench, with which, we fully agree, we do not find any scope to entertain this appeal, as there is no question of law, much less substantial question of law involved in this appeal. Index : yes (F.M.I.K.J) (M.M.S.J.)

Internet: yes 10.08.2010.

ATR

To

1. The Secretary

Central Board of Direct Taxes

New Delhi.

2. Income Tax Appellate Tribunal

Madras 'B' Bench

Madras.

3. The Commissioner of Income Tax (Appeals)-I

Coimbatore.

4. The Assistant Commissioner of Income-Tax

Company Ward, Coimbatore.

F.M.IBRAHIM KALIFULLA,J,

and

M.M.SUNDRESH,J.

ATR

TC (A) No.715 of 2010

10.08.2010.