IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

ITA.No. 140 of 2012 ()

(AGAINST THE ORDER IN I.T.A.NO.1834/(MDS)/2003 (ASSESSMENT YEAR 1998-99) DATED 9/3/2012 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, KOCHI, RECEIVED BY THE APPELLANT ON 18/4/2012.

APPELLANT(S)/APPELLANT:

M/S.MIDLAND LATEX PRODUCTS LIMITED,
64, (OLD NO .20), RUKMANI LAKSHMIPATHI SALAI,
EGMORE, CHENNAI-8

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI

RESPONDENT(S)/RESPONDENT IN ITA:

COMMISSIONER OF INCOME TAX,
I S PRESS ROAD, ERNAKULAM, KOCHI-682018.

BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 16-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.

I.T.A. No.140 of 2012

Dated this the 16th day of February, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal by the assessee is against an order of the Income Tax Appellate Tribunal setting aside the decision of the Commissioner of Income Tax (Appeals) whereby the Appellate Commissioner had interfered with the order of the Assessing Officer, re-opening the assessment.

2. We heard the learned counsel for the appellant and the learned counsel for the Revenue.

3. The short question germane for decision in this appeal is as follows:

> Did the Appellate Tribunal err in law in upholding the order of the Assessing Officer re-opening the

assessment completed under Section 143(3) of the Income Tax Act and whether the Tribunal was right in law in directing the Assessing Officer to re-consider the issue of exemption, if any, available to the assessee, under Section 10A of the Income Tax Act?

4. The appeal relates to the assessment year 1998-99. As rightly noted by the Tribunal, the only issue that arose for decision at the hands of the Tribunal was as to whether the reopening of assessment was in accordance with law.

5. It was noted by the Tribunal that the question whether there was excess relief granted on the face of Section 10A of the Income Tax Act needed to be looked into as the effect of the provisos as applied for the relevant period had escaped the consideration of the Assessing Officer when the initial assessment order was issued. This being apparent from a clear reading of the first assessment order, the Tribunal was well founded in affirming the re-opening proceedings and interfering with the order of the Commissioner of Income Tax (Appeals).

6. More particularly, we see that the order of remit made by the Appellate Tribunal has been rendered also noticing that the matter stands restored on the file of the Commissioner of Income Tax (Appeals) and the appeal has to be disposed of after giving opportunity of hearing to the assessee. The re-opening order having thus been affirmed, all issues as to exemptions, if any, available to the assessee, including in terms of Section 10A of the Income Tax Act, will remain open for adjudication before the Tribunal.

7. The argument on behalf of the appellant that what has led to the impugned reopening order was merely a change of opinion of the Original Assessing Officer as contained in the Original Assessment Order does not stand. If the Assessing Officer, at the first instance, has ignored the very particular binding statutory provision, that by itself, would be sufficient ground on which the assessment order could be re-opened. The plea in that regard therefore fails.

8. In the view of the matter, we do not see that any ground arises for decision as a question of law for

consideration in this appeal in favour of the assessee. This appeal, therefore, fails.

In the result, this appeal is dismissed.

Sd/-

(**THOTTATHIL B. RADHAKRISHNAN, JUDGE)**

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge