In the High Court of Judicature at Madras

Dated : 03.08.2015

Coram :-

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) No.547 of 2015

The Commissioner of Income Tax
Chennai ..Appellant/Respondent

v.

M/s Chennai Garments
Flat No.5, 3rd Floor,
32, 92nd Street,
18th Avenue, Ashok Nagar
Chennai 600 082 ..Respondent/Appellant

Tax Case Appeal filed under section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, Chennnai dated 27.01.2012 passed in I.T.A.1807/Mds/2010 and against the order passed by the Commissioner of Income Tax (Appeals)-VIII, Chennai-34, made in ITA No.134/0910, dated 30.04.2010 and against the order made in PAN No.AABFC9957F, dated 29.12.2009 for the assessment -year 2004-05 by the Asst. Commissioner of Income Tax Business Circle-III, Chennai.

For Appellant : Mr.T.Ravikumar

JUDGMENT

(Judgment of the Court was delivered by V.Ramasubramanian,J.))

The Commissioner of Income Tax has come up with the above appeal under Section 260(A) of the Income Tax Act, 1961.

2. Heard Mr.T.Ravikumar, learned counsel for the appellant.

3. The respondent assessee filed a return of income on 27.10.2004 for the assessment year 2004-05, on a gross total income of Rs.2,47,37,757/-. He claimed a deduction of Rs.71,64,030/- under Section 80 HHC.

4. The respondent was also earlier assessed under Section 143(3) on 31.03.2006 on assessed income of Rs.1,78,80,672/-, after allowing a deduction under Section 80 HHC of Rs.68,58,976/-. Subsequently, the return was re-opened and a notice under Section 148 was issued. Thereafter, a revised assessment order was passed on 29.12.2009, reducing the deduction allowable under Section 80 HHC from Rs.68,58,976/- to Rs.60,10,271/-.

5. The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-VIII. The appeal was rejected by the Commissioner by an order dated 30.07.2010.

6. The assessee filed an appeal in I.T.A.No.1807/Mds/10 before the Income Tax Appellate Tribunal. The Tribunal, by an order dated 27.01.2012 allowed the appeal. Therefore, the department is before us.

7. A bare perusal of the order of assessment passed on 29.12.2009 would show that what the Assessment Officer had chosen to do it only to re-open the assessment, on a change of opinion. The relevant portion of the order of the Assessing Officer dated 29.12.2009 would make this position very clear. Hence, it is extracted as follows:-

> "The assessee firm is in garments business and its total sale is export sale. Assessee claimed a deduction u/s 80 HHC for Rs.71,64,030/-.
>
> In the year assessee earned income by way of quota sale Rs.19,35,093/- and included that amount to the export turnover for the purpose of computation of deduction u/s 80 HHC.
>
> In the earlier assessment order, the AO observed that the quota sale should be considered as local sale and therefore, he proceeded to re-compute the eligible deduction u/s 80HHC, and he determined the allowable deduction for Rs.68,58,976/-.
>
> It appears that the workings of 80HHC as made in the assessment order were not correct and assessee was allowed excess deduction u/s 80HHC....."

8. It is true that an income that escaped assessment can always form the basis for re-opening of assessment. Mr.T.Ravikumar, learned Standing Counsel for the department, on the question of law, pure and simple, may be correct in his submissions that under clause (c)(iv)

under Explanation II to Section 147, computation of any allowance in excess of the permissible limits, can be ordered as a case where income chargeable to tax had escaped assessment. But, can that form the basis for re-opening of assessment is a most fundamental question to be answered.

9. It is well settled that merely because another Assessing Officer finds some thing wrong with the order of assessment passed by the previous one, assessment cannot be re-opened. The provisions of Section 147, which enables the Assessing Officer, who has reason to believe that income chargeable to tax has escaped assessment to reopen the assessment and recompute the assessment, cannot be exercised merely because one officer finds fault with the previous one. Hence, we do not find any justification to entertain the appeal. Therefore, it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rg

To

1. The Income Tax Appellate Tribunal,
Madras "C" Bench, Chennnai.

2. The Commissioner of Income Tax (Appeals)-VIII,
No.121, Mahatama Ganthi, Road, Chennai 600 034.

3. The Assistant Commissioner & Income Tax,
Business Circle-III, Chennai.

+1cc to Mr.T. Ravikumar, Advocate, S.R.No.39520

SCD(CO)
EU(24/08/2015)