

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.10.2015.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

T.C.(A) No.860 of 2015

The Commissioner of Income Tax,
Chennai.

Appellant

vs.

M/s.AKS Alloys P.Ltd.,
193 & 232, Walltax Road,
Chennai 600 003.

Respondent

Tax Case (Appeal) against the order of the Income Tax Appellate Tribunal Madras "D" Bench, Chennai dated 29.4.2014 passed in I.T.A.No.2171/Mds/2013 against the order of the Commissioner of Income Tax (Appeals)-1, Chennai-34, made in ITA.No.194/09-10/A-1, dated 20/09/2013 against the order of the Deputy Commissioner of Income Tax Company Circle 1(1), Chennai, made in PA/GIR.No.AADCA6937C/Ax6-296, dated 30/10/2009, which was preferred against the order of The Commissioner of Income Tax Chennai, dated 20/3/2009 made in C.No.218/CIT-1/42 / 263/2007-08, which was filed against the order of the Assistant Commissioner of Income Tax, Company Circle 1(1) Chennai dated 31/7/2006 made in PAN/GIR No.AADCA6937C/Ax6-296 for the Assissment year 2004-05

For appellant : Mr.T.Ravikumar

JUDGMENT

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

This appeal is by the Revenue, raising the following question of law:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in allowing deduction under section 80IB to the assessee, when the provisions of Section 80IB(13) read with section 80IA(7) mandates filing of Auditor Form 10CCB by qualified accountant for making a claim for deduction?"

2. Heard Mr.T.Ravikumar, learned Standing Counsel appearing for the appellant/Revenue.

3. Assessment for the assessment year 2004-2005 in respect of the respondent/assessee was completed on 31.7.2006 under section 143(3) on a total income of Rs.13,24,370/-. The assessee had claimed deduction under section 80IB for a particular amount in the revised computation, as against a higher amount claimed in the return filed. But, the assessee failed to furnish audit report in Form 10CCB read with Rule 18BBB of the Rules, either with the original return or with the revised computation. Unfortunately, the assessing officer failed to call for the certificate but, allowed the claim.

4. Therefore, the Commissioner of Income Tax initiated proceedings under section 263 and issued a notice on 19.1.2009. The assessee gave a reply enclosing the audit report.

5. The Commissioner of Income Tax, after holding that the audit report ought to have been filed alongwith the return of income, set aside the assessment on the ground that there were also discrepancies in the certificate and consequently, remitted the matter back to the assessing officer.

6. Thereafter, the assessing officer passed a fresh order of assessment dated 30.10.2009, disallowing the claim under section 80IB on the ground that certificate in Form 10CCB was not enclosed. The assessee filed an appeal and the same was allowed by the Commissioner of Income Tax(Appeals), by an order dated 20.9.2013. The Revenue appeal was dismissed by the Tribunal by an order dated 29.4.2014 forcing the Revenue to come up with the above appeal.

7. It is no doubt true that under sub-section (7) of section 80IA, the deduction under sub-section (1) from profits and gains derived from an Undertaking is not admissible unless the accounts of the Undertaking for the previous year relevant to the assessment year for which deduction is claimed, have been audited by an Accountant and the assessee furnishes, alongwith his return of income, the report of such audit in the prescribed format. The prescribed format is form 10CCB. Therefore, the mandate of the statute is that the audit report should be filed alongwith the return of income. This is clear on a plain reading of sub-section (7) of Section 80IA. However, by judicial interpretation, the assesseees are permitted to file the

audit report atleast before the completion of assessment, even if they have omitted to furnish the certificate alongwith the return of income. Therefore, the only question that should be addressed to in these cases is as to whether the audit report was filed either alongwith the return of income or atleast before the completion of assessment or not.

8. On the facts of this case, there is no dispute that the assessee failed to furnish the audit report alongwith his return of income. It is admitted that he filed the report in the course of the proceedings under section 263. Will it be a sufficient compliance, is the question that we should address ourselves for finding an answer to the question of law raised herein.

9. A look at the operative portion of the order passed by the Commissioner of Income Tax on 20.3.2009, under section 263 of the Act would show that what was done by him was not an outright rejection of the certificate. The relevant portion of para 4 of the order of the Commissioner of Income Tax passed under section 263 is extracted hereunder:-

"I have carefully considered the assessee's reply. Filing of Audit certificate u/s 80-IB is not an idle formality. It is a statutory requirement and it is mandatory for the assessee to furnish the certificate. Though the Assessing Officer might have considered the computation furnished by the assessee, he had no occasion to examine the Audit Report in the prescribed format. Copy of the Audit Report furnished by the assessee along with its reply to the present notice u/s 263 shows that the certificate is dated 06.12.2005, which is 21 months after the end of the relevant previous year. There is also discrepancy with regard to the year for which the deduction is being claimed. The initial assessment year is stated to be assessment year 2000-2001, but in the certificate 10CCB enclosed to the present notice u/s 263, it is stated that the year under consideration viz., A.Y.2004-05 is the fourth year of claim of deduction u/s 80-IB. The assessee has not stated either in the Return of income or any other documents furnished in the course of hearing, the actual date of incorporation of the assessee and the year of commencement of

the assessee's business. It has been registered with the Registrar of Companies from the year 1994 itself. As the assessment has been completed without the statutory audit report prescribed under sec.80-IB of the Act, I consider it necessary that the Assessing Officer should examine the claim on the basis of certificate furnished by the assessee in the course of proceedings u/s 263 of the Act and for the limited purpose, set aside the assessment completed by the Assessing Officer. The Assessing Officer shall also examine the date of incorporation of the company the year from which the company is assessed to tax, the previous location of the manufacturing unit and the date of shifting of the unit to Pondicherry while considering the year from which the claim is admissible."

10. Two things could be deciphered from the order of the Commissioner of Income Tax under section 263. They are (1) that the Commissioner of Tax did not reject the audit report outright on the basis of sub-section (7) of section 80IA and (2) that the Commissioner of Income Tax actually set aside the order of assessment and remitted the matter back to the assessing officer.

11. As rightly pointed out by the Commissioner of Income Tax (Appeals) and the Tribunal, it was open to the Commissioner of Income Tax, in his proceedings under section 263, even to refuse to accept the audit report and to reject it outright on the ground that furnishing of the same in the course of the proceedings under section 263 is not a sufficient compliance. The Commissioner of Income Tax did not choose to do so.

12. On the contrary, the Commissioner of Income Tax gave a positive direction to the assessing officer to examine the claim of the assessee for the benefit of section 80IB on the basis of the certificate furnished in the course of the proceedings under section 263. Therefore, the limited purpose for which the Commissioner of Income Tax remanded the matter to the assessing officer was actually to see whether the discrepancies disentitle the assessee to the benefit and not to see whether the non-furnishing of the audit report disentitle him to the benefit.

13. The issue could be looked at from another angle. Once the original order of assessment is set aside and the matter is remitted back to the assessing officer, it should be deemed that

the assessment is not complete. If the law permits the assessee to file the audit report before the completion of the assessment and before the passing of the order of assessment, the respondent cannot be denied the benefit.

14. As a matter of fact, the question of law, as raised by the Department, focusses attention on what the Commissioner of Income Tax (Appeals) and the appellate Tribunal did. It does not focus attention on what the Commissioner of Income Tax did in the proceedings under section 263. Once the certificate has been accepted by the Commissioner of Income Tax in the proceedings under section 263 and the original order of assessment has been set aside, the same has attained finality. Therefore, the question of law, as framed, does not arise for consideration. Hence, the Tax Case appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.Income Tax Appellate Tribunal
Madras "D" Bench, Chennai.

2.The Commissioner of Income Tax,
(Appeals)-1
Chennai-34.

3.The Deputy Commissioner of Income Tax
Company Circle 1 (1),
Chennai.

4.The Commissioner of Income Tax,
Chennai.

5.The Assistant Commissioner of Income Tax
Company Circle 1(1),
Chennai.

+1cc to Mr.T.Ravikumar, Advocate sr.56386

T.C.(A) No.860 of 2015

nm(CO)
srg(08/01/2016)



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