

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.3.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C. (A) .No.1129 of 2007

Rane Madras Ltd.
61, Velacherry Road
Chennai - 600 042

...Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax
Company Circle V(3)
Chennai - 600 034.

...Respondent/Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "B" Bench, Chennai, dated 12.1.2007 made in I.T.A.No.246/Mds/2004 for the assessment year 1996-1997, against the order of Income Tax(Appeals) V, Chennai, in ITA No. 187/2003-2004 dated 24.12.2003, against the proceedings of the Asst. Commissioner of Income Tax Company Circle - V (3), Chennai, made in GIR No. 53034-R/96-97 dated 28.05.2003 and 29.05.2003, against order of the Deputy Commissioner of Income Tax Department, Company Circle V (3) Chennai in PA No.AAACR4215M/53034-R dated 08.11.2002 assessment year 1996-1997.

For Appellant : Mr.Vijayaraghavan
for M/s. Subbaraya Aiyar
Padmanabhan & Ramanmani

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

This appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "B" Bench, Chennai, dated 12.1.2007 made in

I.T.A.No.246/Mds/2004 for the assessment year 1996-1997 and the same was admitted on the following question of law:

"Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the claim of depreciation made under bona fide belief but withdrawn as soon as the assessee was aware that machineries have not been actually put to use would amount to concealment and furnishing of inaccurate particulars and, therefore, liable to penalty under Section 271(1)(c) of the Act?"

2. Here is a case where the assessee claimed depreciation on certain machineries without verifying as to whether the same have been actually put to use or not. The excess claim of depreciation was noted by the authorities of the Central Excise Department during September, 1999. Even though the assessee was in the know of the above fact, they remained silent and did not file a revised return of income until the Income Tax Department issued notice on 5.3.2002, i.e. for more than two and half years.

3. A plea was made that the assessee engaged a Consultant for valuation of plant and machineries and he was at fault for claiming such excess depreciation erroneously. The Original Authority as well as the Commissioner of Income Tax (Appeals) and the Tribunal came to the conclusion that there is an element of mens rea in the action of the assessee in claiming depreciation in respect of assets without they being actually put to use for the purpose of business or profession as contemplated under Section 32(1) of the Income Tax Act.

4. On the plea of the assessee that penalty under Section 271(1)(c) of the Act cannot be imposed on an erroneous claim made by the assessee, the Tribunal observed as under:

"4.2. Upon a careful consideration of the issue, we find that it is the assessee's plea that, upon noticing that depreciation has been claimed on assets without their being put to use, it had appointed a Consultant and thereafter upon receipt of Consultant's Report it was in the process of revising the claim of depreciation when the department initiated re-opening proceedings. Here, as pointed out by the learned Commissioner of Income Tax (Appeals), the correspondence with consultant engaged for valuation of plant and machinery and the assessee, only revealed that it was the assessee only who provided the consultant the details of assets on which depreciation was claimed without their actually being put to use. This is very much evident in the letter dated 12.12.01 addressed to the consultant, copy of

which has been submitted by the learned counsel of the assessee. Hence, the premise that the assessee was awaiting Consultant's Report for revising the return is not at all convincing. Moreover, the said Report cannot be said to have confirmed the basis for revising the return. The assessee's letter to a statutory auditor again dated 12.12.01 can only be said to be a self-serving statement. As a matter of fact, the contents rather prove the claim of assessee hollow as in the letter itself the assessee has stated to the auditors that 'the fixed asset added in earlier years were capitalized and depreciation claim before the same were put to use in two years i.e. Previous year (PY) 1995-96 and 1996-97.' Thus, the letter also corroborates the fact that assessee was well aware of the factual position that excess claim of depreciation has been made and the same has not been revised.

4.3. Hence, in a nutshell, it can be stated that assessee was following an erroneous system whereby the depreciation was being claimed on the assets after their being received without a final verification as to whether the same has actually been put to use or not. Keeping this system in vogue itself can give an element of mens rea in the assessee's action. As a result of this flaw in system, excessive depreciation was being claimed. The excess claim of depreciation was noted by the Central Excise Authority as early as September, 1999. Despite the above, the assessee chose to remain silent and awaited the notice of the Income Tax Department dated 5.3.2002 to revise the return. Here also, after having been made aware that excessive/false claim of depreciation has been made, the assessee did not revise the return till the receipt of notice from Income Tax Department. The plea that the assessee had appointed a consultant and was awaiting his report to revise the return clearly lacks cogency as discussed in previous paragraph. This clearly exhibits element of mens rea in the action of the assessee. Moreover, the system being followed by the assessee was automatically designed to claim wrong amount of depreciation and to this extent also the assessee can be held to be liable for action u/s 271(1)(c)."

On this plea, the Tribunal relied upon a decision of the Supreme Court in K.C.Builders and another v. ACIT, (2004) 265 ITR 562 and upheld the order of penalty and dismissed the appeal filed by the

assessee.

5. Aggrieved by the said order, the present appeal is filed by the assessee raising the question of law, referred supra.

6. The main plea canvassed by the learned counsel for the assessee is that there is no concealment of particulars and, therefore, the penalty imposed under Section 271(1)(c) of the Act should be set aside.

7. Before advertng to the merits of the case, it would be apposite to refer to Section 271(1)(c) of the Act, which reads as under:

"Section 271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

Explanation 1.- Where in respect of any facts material to the computation of the total income of any person under this Act,-

(A) such person falls to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

Then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed."

(emphasis supplied)

8. In the case on hand, the finding rendered by the Tribunal and the authorities below is that the assessee has cautiously made concealment and furnished inaccurate particulars. A bare perusal

of the orders of the authorities below shows that despite their being knowledge from September, 1999, the assessee took no steps to file a revised return up to 2002. Thereafter, on issuance of notice by the Income Tax Department, the assessee filed revised return. It is, therefore, clear that the assessee has not filed revised return voluntarily and had filed it only after the department issued notice after finding that depreciation has been claimed on assets without the same being put to use. It is the bounden duty of the assessee to verify as to whether the machineries have been put to use before making a claim for depreciation. The conduct of the assessee in making a claim for depreciation without actually putting the machineries to use tantamounts to furnishing inaccurate particulars attracting the rigours of Section 271(1)(c) of the Act.

9. The only plea raised by the assessee that the said delay in filing revised return was on account of delay in obtaining the Consultant's Report was rejected by all the authorities below and we find no reason to differ with the finding rendered by them in view of the reasoning given above. We find that the assessee has furnished inaccurate particulars and the explanation offered by them also is untenable and not bona fide. In our considered view, the conduct of the assessee attracts the provision of Section 271(1)(c) of the Act.

For the foregoing reasons, we have no hesitation to hold that the order of the Tribunal is justified. This appeal is dismissed and the substantial question of law is answered against the assessee and in favour of the Revenue. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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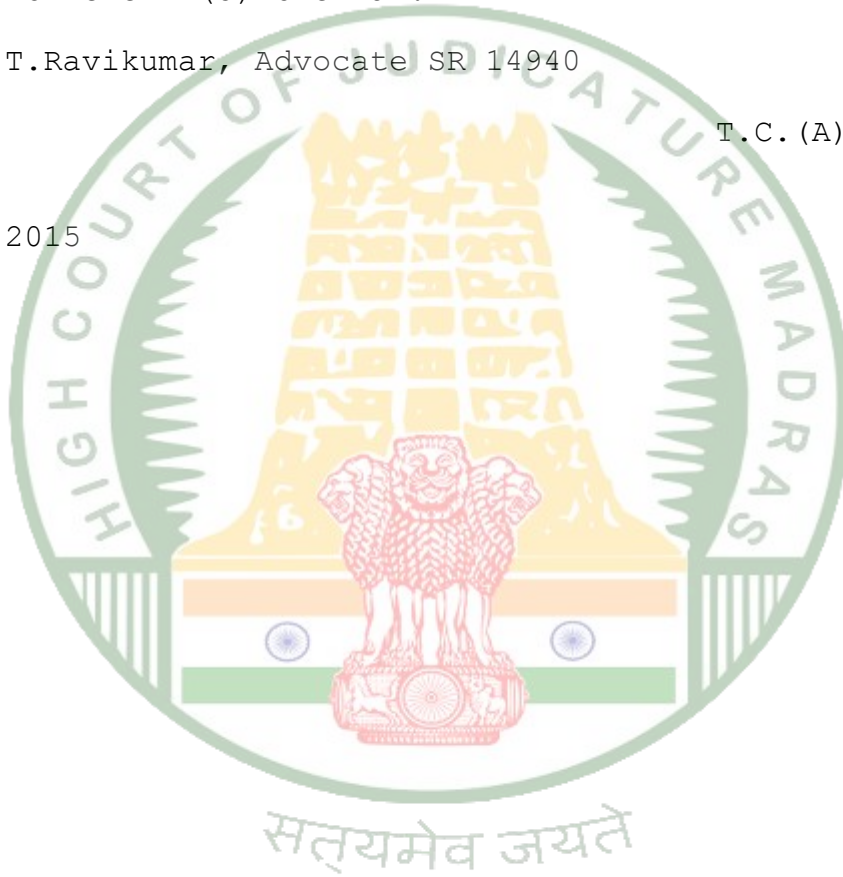
1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.

2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals) - V
Chennai.
4. The Deputy Commissioner of Income Tax
Company Circle-V(3), Chennai.
5. The Assistant Commissioner of Income Tax,
Company Circle V (3) Chennai.

1CC to Mr.T.Ravikumar, Advocate SR 14940

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PSI 27.03.2015



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