In the High Court of Judicature at Madras

Dated : 17.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Tax Case Appeal No.1383 of 2007

M/s.R.R.Industries Limited,
Chennai-32. ...Appellant

Vs

The Commissioner of Income Tax,
Chennai-III, Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 19.1.2007 made in I.T.A.No.1500/Mds/2005 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2001-02.

For Appellant : Mr.K.Ravi
For Respondent : Mr.T.Ravikumar

Judgment was delivered by V.RAMASUBRAMANIAN,J

This tax case appeal, under Section 260A of the Income Tax Act, 1961, is by the assessee.

2. The above appeal was admitted on 12.11.2007 on the following substantial questions of law :

> *"(i) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of the Commissioner of Income Tax, which has revised the assessment order despite not being 'erroneous' and 'prejudicial' to the interest of the Revenue ? and*
>
> *(ii) Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not adjudicating on the claim of the assessee to allow the carried forward business losses and unabsorbed depreciation to be set off against the current year's income ?"*

3. The assessee was originally engaged in the business of manufacture and export of leather goods. It availed term loans from the Tamil Nadu Industrial Investment Corporation and the State Industries Promotion Corporation of Tamil Nadu, purchased lands, constructed buildings and imported machinery.

4. The operations of the assessee ran into difficulties during the accounting period ended 31.3.1998. Therefore, the assessee leased out substantial portion of the premises to an infrastructure development company and claimed depreciation on that portion of the building.

5. In the return for the assessment year 2001-02, the appellant claimed a business loss of Rs.1,27,95,073/-, setting it off with the income from house property thereby claiming a net loss of Rs.37,31,967/-. The appellant also claimed refund of the entire tax deducted at source on the

ground that no tax was payable during the relevant year.

6. The Assessing Officer completed the assessment under Section 143(3), disallowing a portion of the depreciation on building, furniture and plant and machinery, claim of bad debts, etc., and assessed the total loss at Rs.9.41 lakhs as against the returned loss of Rs.37.31 lakhs. The order was appealed against.

7. During the pendency of the appeal, the Commissioner issued a notice under Section 263, alleging that the order of assessment was both erroneous and prejudicial to the interests of the Revenue. The appellant gave a reply. But, the Commissioner passed an order on 12.4.2005 holding that the business of the appellant had been discontinued and that there was no sale effected by the appellant as claimed. The Commissioner consequently held that the business loss claimed by the appellant should be disregarded and not to be set off and that the business loss brought forward by the appellant should not be allowed to be set off. The appellant unsuccessfully filed an appeal before the Tribunal and thereafter, came up with the above appeal.

8. The law is well settled on the scope of jurisdiction under Section 263. The Supreme Court held in ***Malabar Industrial Co.Ltd. Vs. C.I.T. [(2000) 243 ITR 83]*** that for invoking Section 263, the Commissioner should be satisfied of the existence of two conditions namely

(a) that the order of the Assessing Officer sought to be revised was erroneous and

(b) that the order was also prejudicial to the interests of the Revenue.

9. In the case on hand, both the Assessing Officer as well as the Commissioner were ad idem on one thing namely that the business operations of the assessee came to a stand still during the accounting year ending 31.3.1999. In paragraph 6 of the order dated 12.4.2005 passed under Section 263, the Commissioner concurred with the finding of the Assessing Officer that the assessee did not carry on business during the year under consideration.

10. Once, on facts, it is found by the Assessing Officer and by the Commissioner that the assessee did not carry on business during the year under consideration, then it follows as a corollary that the assessee could not have claimed expenses under the heading 'business expenditure'. The error committed by the Assessing Officer in allowing business expenditure, was clearly an error of law, which satisfied the first condition. This error of law consequently became prejudicial to the interests of the Revenue, as seen from the computation made by the Deputy Commissioner in the proceedings for giving effect to the order of the Commissioner. In such circumstances, the first question of law on the scope of Section 263 has to be answered against the appellant/assessee.

11. We are also supported in our above view by the decision of the Delhi High Court in ***CIT Vs. Goetze (India) Limited [(2014) 361 ITR 05050].*** Therefore, the first question of law is answered against the appellant/assessee.

12. The second question need not be adjudicated, in view of our answer to the first question.

13. The tax case appeal is dismissed of accordingly. No costs.

17.2.2016

Internet : Yes

To
1.The Income Tax Appellate Tribunal, 'B' Bench, Chennai
2.The Commissioner of Income Tax, Chennai-III, Chennai-34.

RS

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J
RS

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