In the High Court of Judicature at Madras

Dated : 10.2.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Tax Case Appeal No.580 of 2008

M/s.Ashok Leyland Ltd.,
Chennai-1. ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Company Circle-I(1),
Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 26.11.2007 made in I.T.A.No.1946/Mds/2006 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 1999-2000.

For Appellant : Mr.R.Venkatanarayanan
For Respondent : Mr.T.Ravikumar

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

The above tax case appeal, filed by the assessee, was admitted on 7.7.2008 on the following substantial questions of law :

> *"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the action of the Assessing*

*Officer in rectifying the assessment order under Section 154 of the Income Tax Act, adjusting the business loss against long term capital gains ?*

*(ii) Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that long term capital gains of domestic company is subject to tax independently under Section 112(1)(b) of the Act and the other income/ loss has to be assessed separately as its total income ? and*

*(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in interpreting that the term 'may' used in Section 71(2) of the Act, has to be treated as 'shall' and the long term capital gains ought to be set off against the loss under any other head of income ?"*

2. Heard Mr.R.Venkatanarayanan, learned counsel for the appellant/ assessee and Mr.T.Ravikumar, learned Standing Counsel for the Department.

3. For the assessment year 1999-2000, the assessment was completed on 26.3.2002 determining the total income of more than Rs.17 crores. In computing the total income, business loss of more than Rs.85 crores had not been adjusted against the long term capital gains of Rs.17,67,37,705/-. Considering the above as a mistake apparent from the record, a notice for rectification was issued under Section 154 on 6.9.2004 for revision of assessment.

4. Though the assessee contended that Section 71(2) uses the expression 'may' indicating that they have an option either to adjust or not to

adjust the business loss against capital gains, the objection was overruled and an order was passed under Section 154 on 4.2.2005. The assessee filed a first appeal. The Commissioner dismissed the first appeal and the same was confirmed by the Income Tax Appellate Tribunal. Therefore, the assessee is on appeal.

5. We do not think that the view taken by all the three Authorities is contrary to law. It is true that under Section 71(2), the assessee may set off, against other income assessable for the assessment year under the head 'capital gains', the loss, if any, arising out of computation of different heads of income. But, Section 71(2) does not operate on a stand alone basis. As rightly observed by the Tribunal, the provisions of Section 72(1) may have to be read together.

6. Therefore, the questions of law are answered against the assessee and in favour of the Revenue. The tax case appeal is dismissed. No costs.

10.2.2016

Internet : Yes

To
1.The Assistant Commissioner of Income Tax, Company Circle-I(1),
Chennai-34.
2.The Income Tax Appellate Tribunal 'A' Bench, Chennai.

RS

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J

RS

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