IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH
AND
The Hon'ble Dr. Justice ANITA SUMANTH

W.A.Nos.1305 and 1306 of 2016

The Director General of Income Tax(Inv)
108, M.G.Road, Nungambakkam,
Chennai 600 034 .. Appellant in both WAs

Versus

M/s. Shanthi Hatcheries,
represented by its Partner R.Krishnamurthy,
Palladam, Coimbatore. ..
Respondent in both WAs

Prayer in W.A.No.1305 of 2016 : Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.18103 of 2003 dated 27.10.2015.
&

Prayer in W.A.No.1306 of 2016 : Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.18148 of 2003 dated 27.10.2015.

WP.No.18103&WP.No.18148/03:To issue a Writ of Certiorarified mandamus or any other appropriate Writ or order or directions to call for the records of the respondent in F.No.2006(130)2000-2001 and quash the impugned order dated 28.01.2003 and consequently direct the Respondent to grant relief for the assessment year 1996-1997, 1997-1998 respectively.

For Appellant .. Mr.T.Pramodkumar Chopda

For Respondent .. Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar

COMMON JUDGMENT

(Judgment of this Court was delivered by DR. ANITA SUMANTH, J.)

These Writ Appeals are filed by the Income Tax Department challenging an order of the learned Single Judge dated 27.10.2015. The writ petitioner/ assessee is engaged in the business of Poultry farming and managing hatcheries.

2. With respect to assessment years 1996-97 and 1997-98, returns were filed claiming deduction under section 80 IA of the Income Tax Act, (hereinafter referred to as 'Act'). The Returns were processed under section 143(1)(a) of the Income Tax Act. Thereafter, notice under section 154 of the Act was issued proposing to revise intimations under section 143(1)(a) and disallow the deduction granted under section 80IA of the Act in view of the decision of the Supreme Court in the case of Commissioner of Income Tax Vs. Shri.Venkateswara Hatcheries (P) Ltd (237 ITR 174) reversing the decision of the Andhra Pradesh High Court (174 ITR 231). The assessee agreed with the proposal but alternately claimed deduction under section 80JJ of the Act which was rejected by the officer since the claim did not form part of the return of income. The Assessing Officer consequently levied interest under sections 234B and 234C of the Act.

3. The interest levied under sections 234 B and C of the Act were sought to be waived by the assessee by way of a petition for waiver filed before the Respondent in terms of Board Circular in F.No.400/234/95-IT (B), dated 23.5.1996.

4. The petition was rejected on the ground that the Circular provided for the waiver of interest only in a specific situation where the liability to interest arose on account of a reversal of judgment by the Supreme Court of a decision rendered by the jurisdictional High Court. In the present case, since the judgment of the Supreme Court reversed the decision of the Andhra Pradesh High Court and not the Madras High Court, the Respondent was of the view that the waiver was not called for.

5. Writ Petitions were filed challenging the aforesaid order that were allowed by the learned Single Judge relying on various decisions of the High Courts including the decision rendered by the Karnataka High Courts in the case of UB Global Corporation Limited Vs. Chief Commissioner of Income Tax (355 ITR 87) remanding the matter to the file of the Director General of Income Tax for fresh consideration in the light of the decided case-law.

6.The present writ appeals have been filed at the instance of the Revenue. The thrust of the appeals is to the effect that the decision of the learned Single Judge of the Karnataka High Court has since been reversed by the Division Bench, which was of the view that the Circular would have to be strictly construed and could not be pressed into service in a situation where the decision was rendered by a High Court other than the jurisdictional High Court.

7. The learned counsel for the assessee, on the other hand, would rely on the decision of the Delhi High Court in the case of Sita Holiday Resorts Limited Vs. Chief Commissioner of Income Tax and others (258 ITR 751) pointing out that in identical circumstances, the departmental authorities exercised the power of waiver, waiving 75% of interest in a situation where the decision reversed by the Supreme Court had originated from a High Court other than the jurisdictional High Court.

8. At this juncture, we are informed by the parties that the amount involved in the writ petition is a sum of Rs.2,15,526/- out of which 50% has been deposited by the assessee at the time of admission of the Writ Petition. In these circumstances, without adverting to the legalities of the matter and in the interest of justice, we direct that the balance of the 50% of the interest be waived.

9. The Writ appeals are partly allowed. We make it clear that our decision is rendered only in the facts and circumstances of the present case and would not serve to be a precedent for the position of law canvassed by either party. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msr

To

The Director General of Income Tax(Inv)
108, M.G.Road, Nungambakkam,
Chennai 600 034

+1 cc to Mr.T.Pramodkumar Chopda Advocate sr 3341
+2 ccs to M/s.Subbaraya Aiyar Padmanabhan Advocate sr 3462 & 3463

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