

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2018
Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case No. 1243 of 2008

Commissioner of Income Tax,
Chennai.

...Appellant/Respondent

Vs.

Chettinad Cement Corporation Ltd.,
603 Anna Salai, Chennai - 600 006.

...Respondent/Appellant

Prayer: The Tax Appeal is filed under Section 260 - A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "A" Bench, dated 30.11.2007 passed in I.T.A.No. 2335/Mds/2006, for the assessment year 2001-02, against the order dated 18.10.2006, made in I.T.A.211/2006-07/A-III by the Commissioner of Income Tax (Appeal)-III, Chennai, preferred against the order dated 13.03.2006 by Assistant Commissioner of Income Tax, Company Circle I(3), Chennai preferred against the assessment order, dated 27.2.2004, made in PAN.GIR No.AAACC3130A by the Assistant Commissioner of Income Tax Company Circle 13(1/C), Chennai.

For Appellant : Mrs.K.G.Usha Rani
for Mr. Karthik Ranganathan

For Respondent : Mr.T.R.Senthil Kumar

ORDER

This appeal filed by the Revenue, under Section 260-A of Income Tax Act, 1961 (herein after "the Act" for the sake of brevity) is directed against the order passed by the Income Tax Appellate Tribunal 'A' Bench in ITA No. 2335/Mds/2006, dated 30.11.2007 for the assessment year 2001 to 2002.

2.The appeal has been admitted, vide order dated 20.08.2008, on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was right in deleting the penalty under Section 271(1)(C)?"

3. Before we proceed to answer the Substantial Question of Law, we may note that in the quantum appeal the assessee has succeeded before this Court in TCA No.757 of 2007. The said appeal was filed challenging the order passed by the Tribunal, which rejected the claim made by the assessee for deduction under Section 80IA(4)(iv) of the Income Tax Act.

4. The said appeal filed by the assessee was clubbed with other appeals filed by another assessee and all the appeals were allowed by a common judgment dated 18.01.2012. The Division Bench while allowing the appeals held that the Substantial Questions of Law, which have been framed for consideration, are covered by the decision of this Court in Velayudhaswamy Spinning Mills (P) Ltd., Vs. Assistant Commissioner of Income Tax, [(2010) 231 CTR(Mad) 368]. Thus, the question would be as to whether the Revenue can pursue the present appeal, which is an appeal filed against the order challenging the penalty imposed under Section 271(1)(c) of the Act. The answer to the question should be negative, i.e., in favour of the assessee and against the Revenue.

5. We may also add that the Tribunal has considered the matter in a proper perspective, took note of the factual position and held that at the relevant point of time there were two interpretations which were possible with regard to the deduction that can be claimed under Section 80IA(4)(iv). In such circumstances, the Tribunal has rightly held that the case of the assessee cannot be brought within the ambit of concealment and furnishing of inaccurate particulars with deliberate intention, to avoid payment of tax.

6. The other issue is pertaining to the amounts paid to the employees under the Voluntary Retirement Scheme and whether such expense was an allowable expense or not.

7. At the relevant point of time, the law which held the field was as laid down by this Court in the case of CIT Vs. George Oakes Ltd. [(1992) ITR 288 (Mad)]. This decision was rendered following the decision of the Hon'ble Supreme Court in Sassoon J. David & Co. (P) Ltd. vs. CIT [(1979) 118 ITR 261 (SC)] as well as the earlier decision of the Division Bench of this Court in CIT Vs. Sri Ramvilas Service Ltd. [(1995) 211 ITR 763 (Mad)]. The said decision in the case of George Oakes Ltd., was followed by the Division Bench of this Court in Commissioner of Income Tax vs. Simpson & Co. Ltd., [(1998) 230 ITR 0703].

8. In order to get over the legal embargo which permitted such expense to be allowable as a deduction, the Income Tax Act was amended and Section 35DDA was introduced by Finance Act, 2001 w.e.f 01.04.2001. Thus, in our considered view, the Tribunal was justified in setting aside the penalty levied on the assessee on account of the fact that the assessee had acted in terms of the law prevailing at the relevant point of time. Thus, for the above reasons the Revenue has not made out any grounds to interfere with the order passed by the Tribunal.

9. In the result the Tax Case Appeal filed by the Revenue is dismissed and the Substantial Question of Law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

1. The Income Tax Appellate Tribunal Madras "A" Bench Chennai.
2. The Commissioner of Income Tax (Appeals-III), Chennai.
3. The Assistant Commissioner of Income Tax, Company Circle I (3), Chennai.
4. The Assistant Commissioner of Income Tax, Company Circle I e (1/c), Chennai.

+ 1 cc to Mr. S. Sridhar, Advocate Sr. 70703/2018

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SSV(CO)
EU(02/11/2018)