

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.944 of 2008

M/s.Lakshmi Card Clothing Mfg.Co(P) Ltd.,
No.1089, Avanashi Road,
Coimbatore-641 037 ... Appellant

-vs-

The Deputy Commissioner of Income Tax,
Company Circle-IV(1),
Coimbatore-641 037 ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax appellate Tribunal Chennai [D] Bench, dated 07.01.2008 in ITA No.1606/Mds/2006, for the assessment year 1994-95.

For Appellant : Mr.M.P.Senthilkumar

For Respondent :Mr.T.R.Senthilkumar

JUDGMENT

[Judgement of the Court was Delivered by T.S.Sivagnanam, J.]

This Tax Case Appal by the assessee under Section 260-A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal, Chennai-D Bench ('Tribunal' for brevity) in ITA No.1606/Mds/2006, dated 07.01.2008, for the assessment year 1994-95.

2.This Appeal was admitted by order dated 16.7.2008, on the following Substantial Questions of

Law.

¶1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the appellant was not entitled to the deduction under Section 80I of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that even if all the materials for allowing the deduction under Section 80I of the Act for the year under consideration was available on 'record' before the assessing officer, the same cannot be allowed for technical reason that the assessee had not made the claim for the deduction in its return of income?¶

3. We have heard Mr.M.P.Senthilkumar, the learned counsel for the Appellant and Mr.T.R.Senthilkumar, the learned Senior Standing Counsel for the Revenue.

4. The assessee filed its return of income for the assessment year 1994-95 on 29.11.1994. A notice under Section 143(1)(a) of the Act, dated 1.3.1995, was issued and the assessment was completed under Section 143(3), by order dated 30.03.1995. The assessment order was received by the assessee on 05.04.1995. On 22.4.1996, the assessee filed a Petition under Section 154 of the Act, contending that the assessment suffers from a mistake apparent on the face of the record and is required to be rectified. In the said petition, the assessee contended that for the assessment year 1995-96, the claim for deduction under Section 80-I of the Act was allowed by order dated 29.03.1996 and based on the said order, the assessment order dated 30.03.1995, for the assessment year 1994-95, should be rectified. It was further submitted in the said petition that the claim which was allowed by the assessing Officer under Section 80-I of the Act, for the assessment year 1995-96, in its order dated 29.03.1996, was the 5th year of claim of the company under Section 80-I of the Act. While the petition under Section 154 of the Act was pending before the assessing officer, a notice was issued under section 148 of the Act, dated 07.04.1997, to reopen the assessment for the year 1994-95 on certain grounds. In response to such notice, the assessee filed its return of income dated 23.05.1997. However, in the said return of income, the assessee did not make a claim for deduction under Section 80-I of the Act, as claimed by them in the petition for rectification dated 22.04.1996.

5. The assessee filed a representation dated 21.07.1999, stating that they had filed a petition under Section 154 of the Act, dated 22.04.1996 and the same was pending and requested the petition to be considered. However, in the meantime, the re-assessment proceedings were concluded and the assessment order was passed on 27.12.1999 under Section 143(3) r/w. Section 147 of the Act. The assessee filed appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as CITA). It was dismissed by order dated 02.02.2002. Aggrieved by the same, the assessee filed an appeal before the Tribunal. The Tribunal, by order dated 12.06.2003, allowed the assessee's appeal and quashed the re-assessment proceedings. The merits of the re-assessment were not gone into. The Revenue filed appeals before the Division Bench of this Court in T.C.A.Nos.568 and 666 to 668 of 2005. The Hon'ble Division Bench, while dismissing the appeals, vide judgement dated 21.2.2012, held that the re-assessment was a clear case of change of opinion. However, the merits of the matter on the questions, which were framed by the Revenue, which include the claim for deduction under Section 80-I of the Act, were not gone into and the Court held that it is unnecessary. After the Proceedings concluded before the Hon'ble Division Bench of this Court, the assessee sent reminders dated 20.08.2003 and 5.9.2003 stating that the petition for rectification dated 22.4.1996, filed under Section 154 of the Act, was pending. The assessing officer considered the petition and dismissed the same by order dated 17.2.2004, which was confirmed by the CITA by order dated 17.3.2006 and confirmed by the Tribunal by order dated 17.1.2008, which is impugned in this Appeal.

6.The learned counsel for the assessee strenuously contended that the authorities below as well as the Tribunal having noted that the claim made for deduction under Section 80I of the Act for the assessment year 1994-95 being the 5th year, and the claim having been granted for the assessment years 1991-92, 1992-93, 1993-94 and 1995-96, ought to have considered the petition and allowed the claim. In support of his contention, the learned counsel relied on the judgement of the Hon'ble Division Bench of the High Court of Gujarat, in the case of Chokshi Metal Refinery v. Commissioner of Income Tax (reported in (1977) 107 ITR 0063. In the said decision, the Court referred to a Circular issued by the Central Board of Revenue in June 1955, which states that the officers of the Department must not take advantage of ignorance of an assessee as to his rights and it is one of their duties to assist a tax payer in every reasonable way, particularly in the matters of claiming and securing reliefs. In our considered view the assessee cannot plead any ignorance, especially when they admitted that they had made such a claim for the assessment years 1991-92, 1992-93, 1993-94 and 1995-96. If the argument of the learned counsel for the assessee is accepted, then it will be stretching the assessee beyond what is required to be done by the Assessing officer. Admittedly, the assessee is a company registered under the Companies Act, having a large turnover and team of financial and legal experts and definitely the assessee cannot plead ignorance, nor can the assessee argue that the assessing officer should have granted the relief, which the assessee himself has not claimed in the return. Thus, in our considered view, the decision in Chokshi Metal Refinery does not render any assistance to the case of the assessee.

7.The learned counsel for the assessee relied on the decision of the Division Bench of this Court in the case of Commissioner of Income Tax v. Lakshmi Vilas Bank (reported in (2010) 329 ITR 0591), wherein, the Hon'ble Division Bench held that the word 'record' in the expression 'mistake apparent from record' having not been defined, the word will have to be given a wider import by including the record that is available with the Assessing Officer.

8.In our considered view the argument of the learned counsel for the assessee, by placing reliance on the decision of Lakshmi Vilas Bank, is not acceptable for more than one reason. First of all, the facts of the case clearly show that the assessee did not make any claim for deduction under Section 80-I of the Act, for the relevant assessment year. Secondly, as pointed out by us in the preceding paragraph, while discussing about the applicability of the decision in Chokshi Metal Refinery, if the interpretation sought to be given by the assessee is to be accepted, then it would mean that the Assessing Officer should virtually sit in the office of the assessee and help the assessee file the return. Nowhere under the provisions of the Act such a procedure is contemplated and it is for the assessee to file his return. Apart from that the power under Section 154 of the Act is exercisable only when the mistake is manifest and could be identified by a mere look, which does not need a long drawn out process of reasoning and a mere mistake by itself cannot be a ground to invoke Section 154 of the Act (Lakshmi Vilas Bank). The assessee has not been able to satisfy this Court that what has been pointed out in the petition dated 22.04.1996 under Section 154 of the Act, is a mistake, which is apparent from the record. It is not a mistake which could be identified by a mere look, since there was no claim made by the assessee for deduction under Section 80-I of the Act. Thus, the decision in the case of Lakshmi Vilas Bank also does not render support to the assessee. We find that the reasons assigned by the Assessing Officer and confirmed by the Commissioner of Income Tax(Appeals) as well as the Tribunal, are sound, perfectly legal and valid and the orders do not call for any interference.

For all the above reasons, the appeal filed by the assessee fails and the same is dismissed. The substantial Questions of Law are answered against the assessee. No costs.

[T.S.S., J.] [V.B.S., J.]

24.09.2018

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Index:Yes/No

Internet:Yes/No

To

1.The Deputy Commissioner of Income Tax,
Company Circle-IV(1),
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2.The Income-tax appellate Tribunal Chennai [D] Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

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