IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1075 and 1076 of 2008

Commissioner of Income Tax,
Chennai. .. Appellant in both the
appeals
Vs.

M/s.M M Forgings Ltd.,
Guindy House,
95, Anna Salai,
Chennai-600 032. .. Respondent in both
the appeals
* * *
Prayer : Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 06.12.2007 in ITA Nos.526 and 527/Mds/2007.
* * *
For Appellant in : Mr.Karthik Ranganathan,
both the appeals Senior Standing Counsel

For Respondent in : Mr.M.P.Senthil Kumar
both the appeals

C O M M O N J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]
These appeals filed by the Revenue are directed against the common order passed by the Income Tax Appellate Tribunal, Chennai B Bench, in I.T.A.Nos.526 and 527/Mds/2007, dated 06.12.2007 for the Assessment Years 2001-2002 and 2002-2003.

2. The above appeals have been admitted vide order dated 31.07.2008 on the following substantial question of law:
Whether in the facts and circumstances of the case, the Tribunal was right in holding that the issue of exclusion of export incentive from total turnover for the purpose of deduction under Section 80HHC is not a debatable issue and is rectifiable under Section 154 ?

3. Heard Mr.Karthik Ranganathan, learned Senior Standing Counsel for the Revenue and Mr.M.P.Senthil Kumar, learned counsel for the respondent/Assessee.

4. The short issue, which falls for consideration, is whether the application filed by the Assessee

under Section 154 of the Income Tax Act, 1961 (in short, "the Act") to rectify the intimation dated 21.11.2005 was maintainable and whether the Assessee should be permitted to rectify the mistake, which had occurred, while computing the total turnover.

5. The Assessing Officer vide order dated 21.11.2005 rejected the application dated 03.11.2005 on the ground that non-exclusion of export incentives from the total turnover is not deemed to be a mistake committed by the Department. On appeal, the Commissioner took note of an order passed in the Assessee's own case for the Assessment Year 2000-2001, wherein, the Assessee appears to have committed the same mistake in not excluding export incentives from the total turnover and at the appeallate stage before the Commissioner (Appeals), the Assessee filed a memo raising additional ground, which was allowed in I.T.A.No.282/2005-06. The Commissioner (Appeals) in the instant case for the subject assessment years took note of the said order passed by his predecessor and after taking note of Clause (ba) of Explanation to Section 80HHC of the Act, held that the Assessee should be permitted to make the necessary rectification and accordingly, allowed the appeal and issued a direction to the Assessing Officer to pass necessary rectification order under Section 154 of the Act to modify the original claim made under Section 80HHC in the return of income. Accordingly, the Assessing Officer rectified the original claim and considered the documents and has passed the order dated 12.02.2007.

6. The Revenue preferred appeals before the Tribunal against the orders passed by the CIT (A) dated 27.11.2006. The appeals were dismissed by the impugned order dated 06.12.2007.

7. The Revenue's contention is that the scope of Section 154 of the Act to rectify the intimation is very much limited and even according to the Assessee, they have omitted to deduct the export incentives from the total turnover, the only remedy available to the Assessee is to file a revised return under Section 139(5) of the Act and the time expired in March, 2003, whereas, the rectification application was filed in November 2005. Therefore, it is submitted that the orders passed by the Commissioner (Appeals) as well as the Tribunal call for interference.

8. We have examined the factual position in the instant case and we find that the assessee has made a claim for deduction under Section 80HHC of the Act. However, while calculating the total turnover, the Assessee has failed to exclude the export incentives. Thus, we find that the error is only a computation error and not an omission to make a claim for deduction, which is permissible in the light of the plain language of Section 154 of the Act. Learned Senior Standing Counsel for the Revenue referred to the decision of the High Court of Bombay in the case of Khatau Junkar Ltd. V. K.S.Pathania, (1992) 196 ITR 55. On going through the facts of the case and the decision rendered by the Court, we find that the said decision supports the case of the Assessee, wherein, it has been held as follows :
..... On a plain reading of Section 143(1)(a) of the Act, therefore, it is clear that if, on the basis of the return which is filed by the assessee, any tax or interest is found due after adjustments, as set out in the section, an intimation shall be sent to the assessee specifying the sum so payable. Similarly, if any refund is due to the assessee on the basis of such return, it shall be granted to the assessee. Therefore, such an intimation can be sent to the assessee only on the basis of the return. The proviso, however, to the section permits certain adjustments to be made while calculating the tax or interest payable or while granting a refund. These permissible adjustments are :
(1) any arithmetical error in the return, accounts or documents accompanying it can be rectified;
(2) any loss carried forward, deduction, allowance or relief which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but is not claimed in the return, can be allowed; and similarly
(3) any such loss carried forward, deduction, allowance or relief which is claimed in the return but which, on the basis of the information available in such return, accounts or documents, is prima

facie inadmissible, shall be disallowed.

Apart from these provisions, sub-section (2) of Section 143 empowers the Income-tax Officer, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, to serve on the assessee a notice requiring him to produce before him any evidence on which the assessee may rely in support of the return. Thereafter, under sub-section (3), he can proceed to make a regular assessment. The other relevant provision of Section 143 is sub-section (1A) under which, where, after making the adjustments under Section 143(1)(a), it is found that the total income exceeds the income declared in the return by any amount, the Assessing Officer shall further increase the amount of tax payable by additional income-tax calculated at the rate of twenty per cent. of the tax payable on such excess amount. This additional income-tax shall be specified in the intimation which is to be sent under Section 143(1)(a). .....

9. As pointed out earlier, in the instant case, it is only a computation error and it is not an omission to make a claim for deduction. Furthermore, the identical relief was granted in respect of the assessment year 2000-2001 at the stage, when an appeal was filed against the assessment order before the Commissioner (Appeals) and additional ground was raised by the Assessee, which was permitted by the Commissioner (Appeals) and accordingly, the original claim made under Section 80HHC of the Act was modified by the Assessee.

10. Thus, we are of the considered view that the Commissioner (Appeals) as well as the Tribunal rightly held that the Assessee was entitled to file an application under Section 154 of the Act to amend the intimation issued under Section 143(1) of the Act.

11. For the above reasons, the appeals filed by the Revenue are dismissed and the substantial questions of law are answered in favour of the Assessee and against the Revenue.

(T.S.S., J.) (V.B.S., J.)

11.09.2018

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To

1.The Income Tax Appellate Tribunal Madras 'B' Bench.

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax (Appeals),
Chennai.

T.S.SIVAGNANAM, J.
and

V.BHAVANI SUBBAROYAN, J.

gg

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