

In the High Court of Judicature at Madras

Dated : 10.9.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1447 of 2008

Zeenath International Supplies,
Chennai-1. ..Appellant

Vs

The Commissioner of Income Tax,
Central-I, Chennai. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.5.2007 made in ITA.No.138/Mds/2002 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'C' for the assessment year 1998-99.

For Appellant : Mr.M.P.Senthilkumar for
Mr.N.Quadir Hosein
For Respondent : Mr.T.R.Senthilkumar
assisted by Ms.K.G.Usharani

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.M.P.Senthilkumar, learned counsel appearing on behalf of Mr.N.Quadir Hosein, learned counsel on record for the appellant and Mr.T.R.Senthilkumar, learned Senior Standing Counsel for the Revenue.

2. The appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) has been directed against the order passed by the Income Tax Appellate Tribunal dated 04.5.2007. The appeal has been admitted on 17.9.2008 on the following substantial question of law :

□Whether, on the facts and circumstances of the case, the finding of the Tribunal is not perverse considering that the claim of loss of stock of time expired soft drinks and bad debts made in the revised return are within the parameters of Section 139(5) and also in view of the provisions of Section 143(2) of the Act ?□

3. The short issue, which falls for consideration, is as to whether the revised return filed by the assessee for the assessment year in question could have been refused to be accepted for the reasons assigned by the Assessing Officer.

4. In the revised return, the assessee reduced the value of the closing stock by Rs.5,83,275/- and also increased the administrative cost by Rs.3,93,055/-. The Assessing Officer found that the change in figures was not supported by the tax audit report under Section 44AB of the Act. The Assessing Officer, while accepting that along with the original returns, the assessee filed audit report, faulted

with the assessee for not filing tax audit report along with the revised returns. In support of the revised returns, the assessee filed a certificate dated 28.4.1997 stating that the stock of soft drinks worth Rs.5,83,275/- was destroyed by the Port Authorities pursuant to the order passed by the Deputy Port Health Officer dated 28.4.1997. The Assessing Officer opined that in the tax audit report filed along with the original returns, the closing stock as on 31.3.1998 was given at Rs.1,10,12,384/-, that this figure should have been arrived at after considering the time expired stock of Rs.5,83,275/- and that the further claim of reduction was not admissible and accordingly, the claim in that regard was rejected.

5. With regard to the claim for bad debt to the tune of Rs.3.93 lakhs, the Assessing Officer held that the debt was not written off in the books as on 31.3.1998 and that the assessee preferred this claim in the revised returns. However, the assessee had given a legal notice to the debtor dated 24.4.1999, which indicated that the debt became bad only after the accounts were closed for the year ending 31.3.1998. Thus, the Assessing Officer proceeded to hold that as the condition stipulated namely debt to be written off during the relevant accounting year was not fulfilled, the claim for bad debt would not be admissible.

6. The appeal filed before the Commissioner of Income Tax (Appeal) [for brevity, the CIT (A)] also met with the same fate and the appeal was dismissed vide order dated 13.11.2001. Though the assessee filed an appeal before the Tribunal, the Tribunal concurred with the findings given by the Assessing Officer as well as the CIT (A) and dismissed the appeal vide order dated 04.5.2007. Challenging the order passed by the Tribunal, the assessee is before us.

7. On facts, it has to be seen as to whether the assessee was entitled to file a revised return.

8. Section 139(5) of the Act permits an assessee to file a revised return and the said provision states that if any person, having furnished the returns under Sub-Section (1) or Sub-Section (4) of Section 139 of the Act, discovers any omission or wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

9. Admittedly, the assessee filed the revised return on 24.5.1999 well before the period stipulated under Section 139(5) of the Act. This has not been disputed by the Assessing Officer or the Appellate Authority or the Tribunal. However, after taking up the said revised return for scrutiny, the Assessing Officer, while passing the order under Section 143(3) of the Act, rejected the assessee's claim, which, in our considered view, was at the very threshold.

10. We say so because of the fact that if, in the opinion of the Assessing Officer, the return was defective, then the procedure contemplated under Sub-Section (9) of Section 139 of the Act ought to have been followed. This provision enables the Assessing Officer to intimate the defect to the assessee and give an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such period, which, on an application made in this behalf, the Assessing Officer, may, in his discretion, allow and if the defect is not rectified within the said period of fifteen days or as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return. The Proviso states that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

11. Thus, in our considered view, Sub-Section (9) of Section 139 of the Act is a beneficial provision to the assessee, which provides them an opportunity to rectify the defects. Since the intention being that the assessment proceedings are an outcome of dialogue and discussion, the Assessing Officer is entitled to clarify all issues by issuing notice to the assessee and calling upon them to produce documents and explain their books of accounts, etc. Unfortunately, in the instant case, such procedure was not adopted when the revised return was rejected at the very threshold, which, in our considered view, ought not to have been done.

12. For the above reasons, on the peculiar facts and circumstances of the case, we find that the assessee had not been given an opportunity as contemplated under Sub-Section (9) of Section 139 of the Act and therefore, we deem it proper to remand the matter to the Assessing Officer to redo the assessment after giving an opportunity to the assessee in terms of Section 139(5) of the Act to rectify the defects, which have been pointed out by the Assessing Officer in the assessment order.

13. The learned Senior Standing Counsel for the Revenue points out that it is not clear as to whether the bad debts, which were sought to be written off by the assessee, were, in fact, written off in the subsequent year.

14. This issue can also be considered by the Assessing Officer while taking up the assessment afresh in terms of the above direction.

15. In the light of the above, the above tax case appeal is allowed, the substantial question of law is answered in favour of the assessee and the matter is remanded to the Assessing Officer to redo the assessment after giving an opportunity to the assessee to rectify the defects in the revised returns dated 24.5.1999. No costs.

10.9.2018

Internet : Yes

RS

T.S.SIVAGNANAM,J

AND

V.BHAVANI SUBBAROYAN,J

RS

To

1.The Income Tax Appellate Tribunal, Chennai Bench 'C'.

2.The Commissioner of Income Tax, Central-I, Chennai.

TCA.No.1447 of 2008

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