

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Tax Case (Appeal) No.851 of 2008

M/s.Ashok Leyland Ltd
19, Rajaji Salai
Chennai-600 001.

Appellant

Vs

The Deputy Commissioner of Income Tax
Company Circle-I(1)
Chennai-600 034.

Respondent

Prayer:- Tax Case Appeal filed under section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench dated 18.10.2007 ITA No.1476/Mds/2006.

For Appellant : Mr. Mr.Vikram Vijaya Raghavan
For Respondent : Mr.T.Ravikumar and
Mr. R.Sureshkumar

JUDGEMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J.]

Heard Mr.Vikram Vijaya Raghavan, learned counsel appearing for the appellant/assessee and Mr.T.Ravikumar and Mr.R.Sureshkumar learned senior counsels appearing for the

respondent/ Revenue.

2. This appeal by the Appellant/assessee is directed against the order passed by the Income Tax Appellate Tribunal, 'A' Bench Chennai in ITA No.1476/Mds/2006, dated 18.10.2007.

3. This Tax Case Appeal has been admitted on the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction under section 80HHC of the Income Tax Act, in respect of the interest, rent and miscellaneous income earned out of business operations?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that 90% of the gross receipts should be excluded from the profits of the business under clause (baa) of Explanation to section 80HHC of the Act?"

4. So far as question No.1 is concerned, the same has to be answered in favour of the Revenue and against the assessee in the light of the decision, in the case of **Commissioner of Income Tax Vs. K.Ravindranathan Nair** reported in **(2007) 295 ITR 0228**. The

operative portion of the judgement reads as follows:-

"21. At the outset, we may state that, in the present case, we are dealing with the law as it stood during assessment year 1993-1994. At that time Section 80HHC(3) of the IT Act constitute a code by itself. Subsequent amendments have imposed restrictions/qualifications by which the said provision has ceased to be a code by itself. In the above formula three existed four variables, namely, business profits, export turnover, total turnover and 90 per cent of the sums referred to in cl. (baa) to the said Explanation. In the computation of deduction under section 80HHc all four variables had to be taken into account. All four variables were required to be given weightage. The substitution of Section 80HHC(3) secures profits derived from the exports of eligible goods. Therefore, if all the four variables are kept in mind, it becomes clear that every receipt is not income and every income would not necessarily include element of export turnover. This aspect needs to be kept in mind while interpreting cl. (baa) to the said Explanation. The said clause stated that 90 per cent of incentive profits or receipts by way of brokerage, commission, interest, rent charges or any other receipt of like nature included in business profits, had to be deducted from business profits computed in terms of sections 28 to 44D of the IT Act. In other words, receipts constituting independent income having no nexus with exports were required to be reduced from business profits under cl. (baa). A bare reading of cl. (baa) (1) indicates that receipts by way of brokerage,

commission, interest, rent, charges etc., formed part of gross total income being business profits. But, for the purposes of working out the formula and in order to avoid distortion of arriving export profits cl. (baa) stood inserted to say that although incentive profits and 'independent incomes' constituted part of gross total income, they had to be excluded from gross total income because such receipts had no nexus with the export turnover. Therefore, in the above formula, we have to read all the four variables. On reading all the variables it becomes clear that every receipt may not constitute sale proceeds from exports. That, every receipt is not income under the IT Act and every income may not be attributable to exports. This was the reason for this Court to hold that indirect taxes like excise duty which are recovered by the taxpayers for an on behalf of the Government, shall not be included in the total turnover in the above formula (see: *CIT Vs. Lakshmi Machine Works* (supra)).

22. In the present case, the processing charges were included in the gross total income from cashew business. That, even according to assessee the said charges constituted an important component of gross total income from cashew business. This is not disputed. Therefore, in terms of cl. (baa), 90 per cent of the 'independent income' had to be deducted from gross total income to arrive at business profits to which the fraction had to be applied. Since, the processing charges constituted independent income similar to rent, commission, etc., which formed

part of the gross total income, the same had to be reduced by 90 per cent as contemplated in cl. (baa) to arrive at business profits. Therefore, the said processing charges were includible in the total turnover in the formula under section 80HHc(3) of the IT Act.

23. Before concluding we state that the nature of every receipt needs to be ascertained in order to find out whether the said receipt forms part of/or that it has an attribute of an export turnover. When an indirect tax is collected by the taxpayer on behalf of the Government the tax recovered is for the Government. It may be an income in the conceptual sense or even under the IT Act but while working out the formula under section 80HHc(3) of the IT Act and while applying the four variables one has to ascertain whether the receipt has an attribute of export turnover. An indirect tax like excise duty does not have that element of export turnover as understood in the above formula. As stated above, it is recovered by the taxpayer on behalf of the Government. Therefore, in the present cases, our judgement in CIT Vs. Lakshmi Machine Works (supra), has no application."

5. Following the above decision, question No.1 is decided against the assessee and in favour of the Revenue.

6. So far as the second question of law is concerned, the issue

has been decided by the Hon'ble Supreme Court in the case of **ACG Associated Capsules (P) Ltd. Vs. Commissioner of Income Tax** reported in **(2012) 247 CTR 0372**. In the said case the Hon'ble Supreme Court rendered the following conclusion:-

"Ninety per cent of the net interest or net rent which has been included in the profits of the assessee as computed under the head "profits and gains of business or profession" and not the gross rent, is to be deducted under c;(1) of Expln. (baa) to Section 80HHC for determining the profits of the business."

7. Therefore, we are of the view that the matter should be remanded back to the Assessing Officer to take note of the legal position and redo the assessment under the said head.

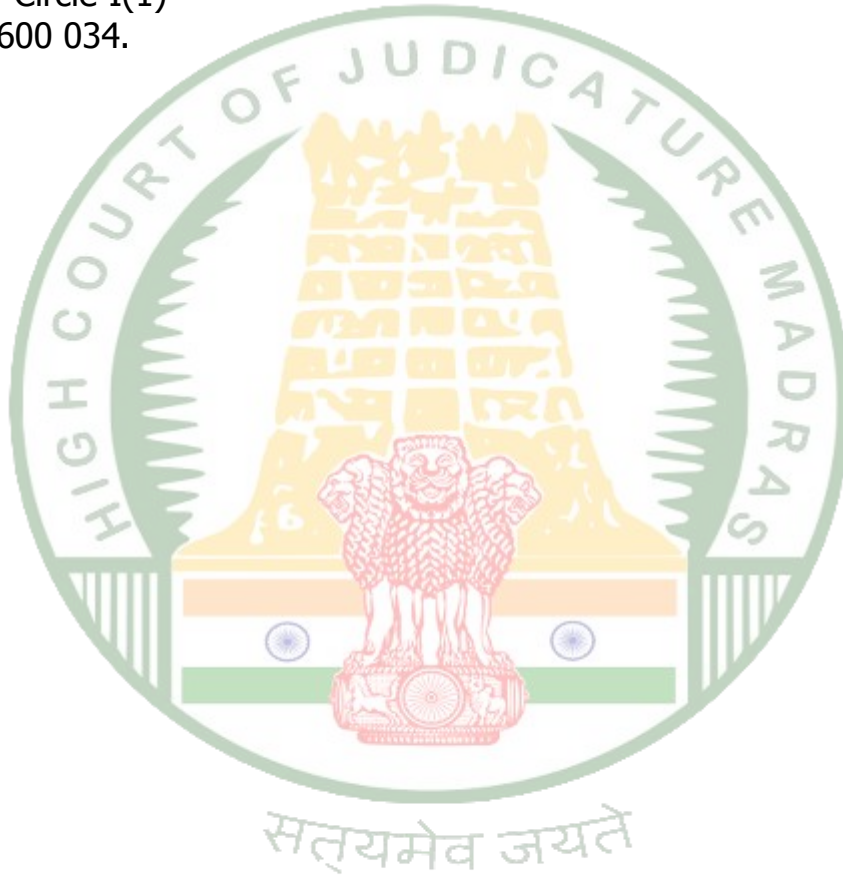
8. Accordingly, the Tax Case (Appeal) is partly allowed and the second substantial question of law is remanded back to the Assessing Officer for fresh consideration in accordance with law, by taking note of the decision in the case of **ACG Associated Capsules (P) Ltd, cited supra**. No costs.

[T.S.S., J.] [N.S.S., J]
03.04.2018

Index : Yes/ No
Internet : Yes /No
kv/srk

To

The Deputy Commissioner of Income Tax
Company Circle-I(1)
Chennai-600 034.



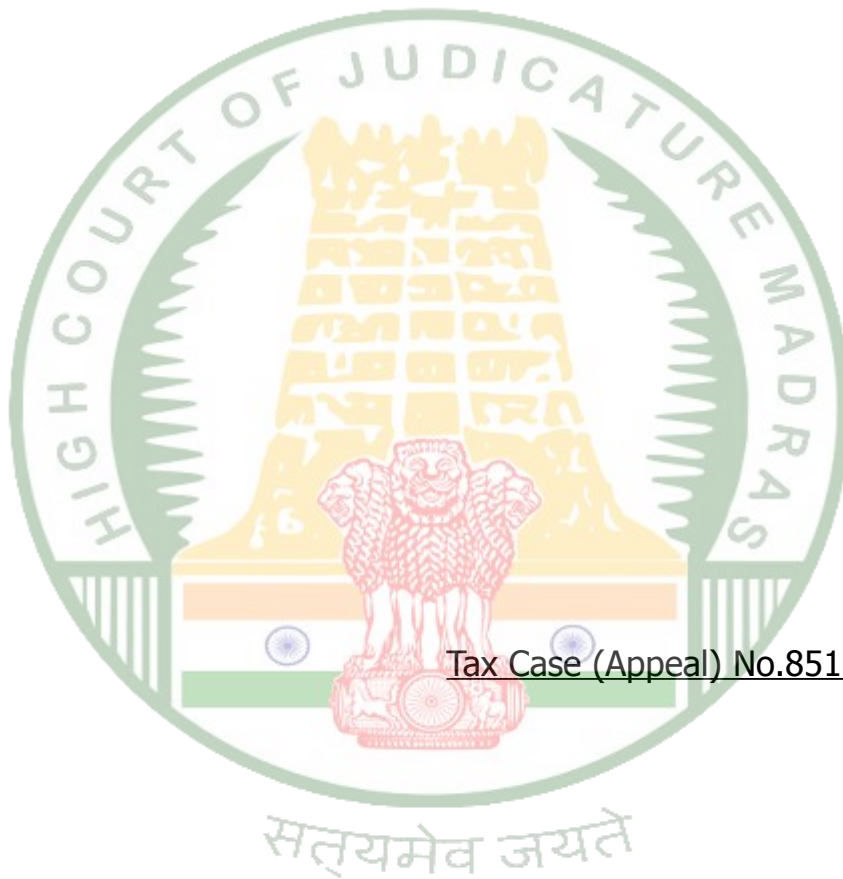
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