IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 10.04.2018
Coram

The Hon'ble Mr.Justice T.S.Siv agnanam
&
The Hon'ble Mr.Justice N.Seshasayee

T.C.(A)No.866 of 2008

M/s. Eagle Press Pvt. Ltd.,
1/5, Vaidyanathan Street,
Tondiarpet, Chennai - 600 081. ...Appellant

Vs.

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

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order, dated 15.09.2006, passed by the Income Tax Appellate Tribunal, Chennai Bench 'A', Chennai -I, in I.TA.No.669/MDS 2006, for the assessment year 2002-03.

For Appellant : Mr.N.Devanathan
For Respondent : Mr. Karthick Ranganathan
and Mr. Vijayakumar Punna

JUDGEMENT

(Judgement of the Court was made by **T.S.Sivagnanam, J.,)**

Heard Mr.N.Devanathan, the learned appearing for the appellant, and Mr.Karthick Ranganathan, the learned Standing Counsel for the respondent/Income Tax Department.

2. This Appeal by the assessee is directed against the order passed by the Income Tax Appellate Tribunal, Chennai Bench 'A', Chennai -I, (ITAT, for brevity) in I.TA.No.669/MDS 2006, for the assessment year 2002-03.

3. The Appeal is admitted on the following substantial question of law:-

> " Whether on the facts and circumstances of the case, the ITAT was right in its interpretation holding that depreciation on wind mills, which had been already adjusted for the assessment years 1995-1996 and 1996-97, against the profits of printing business could artificially be carried forward for the impugned assessment year for the purpose of denial of relief under Section 80 IA read with Sections 80 AB and 80 IA (7), 72 of the Income Tax Act?

4. We need not labour much to decide the question framed for consideration, as, in the assessee's own case, for the earlier assessment year, an identical issue was considered by the Division Bench of this Court, in T.C.A.Nos.881 to 884 of 2007, in M/s. Eagle Press Pvt., Vs. The Asst.

Commissioner of Income Tax), dated 06.07.2016. In the said Appeal, question No.2 was identical to that of the question framed before us in this Appeal. While answering the question in favour of the assessee, the Division Bench noted that, the issue is squarely covered by the decision in **Velayudhaswamy Spinning Mills (P) Ltd., Vs. Assistant Commissioner of Income Tax**, reported in **[(2012) 21 Taxmann.Com 95 (Madras).** The operative portion of the judgment reads as follows:-

> " " "8. Coming to the substantial questions of law 2 and 3 framed on 11.07.2007 and extracted supra, the issue is squarely covered by a decision of this court in **Velayudhaswamy Spinning Mills (P.) Ltd. v. Assistant Commissioner of Income-tax** reported in **[2012] 21 taxmann.com 95 (Mad.)**, wherein, this court, at paragraph Nos.18 to 23 held as follows:-
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> 18. From a reading of the above, it is clear that the eligible business were the only source of income, during the previous year relevant to the initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and

no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten years from the initial assessment is contemplated. It does not allow the Revenue to look backward and find out if there is any loss of earlier years and bring forward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once the set off is taken place in earlier year against the other income of the assessee, the Revenue cannot rework the set off amount and bring it notionally. A fiction created in sub-section does not contemplates to bring set off amount notionally. The fiction is created only for the limited purpose and the same cannot be extended beyond the purpose for which it is created.

19. In the present cases, there is no dispute that losses incurred by the assessee were already set off and adjusted against the profits of the earlier years. During the relevant assessment year, the assessee exercised the option under Section 80-IA(2). In Tax Case Nos.909 of 2009 as well as 940 of 2009, the assessment year was 2005-06 and in Tax Case No.918 of 2008 the assessment year was 2004-05. During the relevant period, there were no unabsorbed depreciation or loss of the eligible undertakings and

the same were already absorbed in the earlier years. There is a positive profit during the year. The unreported judgment of this court cited supra considered the scope of sub-section (6) of section 80-I, which is the corresponding provision of sub-section (5) of section 80-IA. Both are similarly worded and, therefore, we agree entirely with the Division Bench judgment of this court cited supra. In the case of CIT v. Mewar Oil and General Mills Ltd. (No.1)[2004] 271 ITR 311 (Raj); [2004] 186 CTR (Raj) 141, the Rajasthan High Court also considered the scope of section 80-I and held as follows (page 314 of 271 ITR):

"Having considered the rival contentions which follow on the line noticed above, we are of the opinion that on finding the fat that there was no carry forward losses of 1983-84, which could be set off against the income of the current assessment year 1984-85, the re computation of income from the new industrial undertaking by setting off the carry forward of unabsorbed depreciation or depreciation allowance from previous year did not simply arise and on the finding of the fact noticed by the Commissioner of Income-tax (Appeals), which has not been disturbed by the Tribunal and challenged before us, there was no error much less any error apparent on the face of the record which could be rectified. That question would have been germane only if thee would have been carry forward of unabsorbed depreciation and unabsorbed development rebate or any other unabsorbed losses of the previous year arising out of the priority industry and whether it was required to be set off against the income of the current year. It is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under Section 80-I for the purpose of computing admissible deductions thereunder.

In view thereof, we are of the opinion that the Tribunal has not erred in holding that there was no rectification possible under Section 80-I in the present case, albeit, for reasons somewhat different from those which prevailed with the Tribunal. There being no carry forward of allowable deductions under the head depreciation or development rebate which needed to be absorbed against the income of the current year and, therefore, re computation of income for the purpose of computing permissible deduction under section 80-I for the new industrial undertaking was not required in the present case.

Accordingly, this appeal fails and is hereby dismissed with no order as to costs."

20. From a reading of the above, the Rajasthan High Court held that it is not at all required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under Section 80-I for the purpose of computing admissible deductions thereunder. We also agree with the same. We see no reason to take a different view.

21. The standing counsel appearing for the Revenue is unable to bring to our notice any relevant material or any compelling reason or any contra judgment of other courts to take a different view. He only relied heavily on the Memorandum explaining the provisions in the Finance (No.2) Bill, 1980, [1980] 123 ITR (St.) 154 to support this case and the same reads as follows:

"Clause 30(iii). In computing the quantum of 'tax holiday' profits in all cases, taxable income derived from the new industrial units, etc., will be determined as if such units were an independent unit owned by a taxpayer who does not have any other source of income. In the result, the losses, depreciation and investment allowance of earlier years in respect of the new industrial undertaking, ship or approved hotel will be taken into account in determining the quantum of deduction admissible under the new section 80-I even though they may have been set off against the profits of the taxpayer from other sources."

22. We are not agreeing with the counsel for the Revenue. We are, therefore, of the view that loss in the year earlier to the initial assessment year already absorbed against the profit of other business cannot be notionally brought forward and set off against the profits of the eligible business as no such mandate is provided in section 80-IA(5).

23. Under these circumstances, we set aside the order of the Tribunal and answer all the questions in favour of the appellant/assessee and against the Revenue in Tax Case Nos.909 and 940 of 2009 respectively. Accordingly, tax cases are allowed."""

5. In the light of the above decision, the question of law framed for consideration in this Appeal is answered in favour of the assessee and against the Revenue. Accordingly, this Tax Case Appeal is allowed. No costs.

T.S.S.J., N.S.S.J.,
10.04.2018

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Index : yes/no
Speaking/Non speaking order

To

The Income Tax Appellate Tribunal,

Chennai Bench 'A', Chennai -I,

T.S.Sivagnanam,J.,
&
N.Seshasayee,J.,

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