IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

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

Tax Case (Appeal) Nos.31 to 33 of 2009

M/s.MEC International,
No.37, Arcot Road,
Vadapalani, Chennai-600 026. .. Appellant in all Appeals

-vs-

The Deputy Commissioner of Income-tax,
Company Circle IV(1),
Chennai-600 034. .. Respondent in all Appeals

Appeals under Section 260A of the Income-tax Act, 1961 against the common order dated 26.09.2008 on the file of the Income-tax Appellate Tribunal Chennai 'B' Bench, Chennai, in I.T.A.Nos.1717 to 1719/Mds/06 for the assessment years 1999-2000, 2000-01 and 2002-03.

The Appeals filed against the order dated 21/3/2006 on the file of Commissioner of Income Tax (Appeals) XII Chennai-34 made in ITA Nos.245, 246 & 252/05-06 against the order dated 21/3/2005 for the PAN No.AAACM6504C/ME-181 on the file of Deputy Commissioner of Income Tax Company Circle IV 2(i/c) Chennai-34.



For Appellant : Ms.Sree Lakshmi Valli
(In all Appeals)

For Respondent : Mr.Karthik Ranganathan
(In all Appeals) Senior Standing Counsel

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals, filed by the appellant/assessee under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as “the Act”), are directed against the common order dated 26.09.2008, passed by the Income-tax Appellate Tribunal Chennai 'B' Bench, Chennai (for brevity, “the ITAT”), in I.T.A.Nos.1717 to 1719/Mds/06 for the assessment years 1999-2000, 2000-01 and 2002-03 respectively.

2.The above appeals have been admitted, on 26.02.2009, on the following substantial question of law:-

> “Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the Appellant is not entitled to the benefit of set off of business losses against its other income in respect of Assessment Years 1999-00, 2000-01 and 2002-03?”

3.Since the facts are identical in all the three appeals, it would suffice to refer to the facts for the assessment year 1999-2000, which is subject matter of Tax Case (Appeal) No.31 of 2009.

4.The assessee, who was engaged in the manufacture and sale of aluminium conductors, filed its return of income on 30.12.1999 declaring a total income of Rs.28,83,800/-. The return was processed under Section 143(1), on 29.02.2000. Notice under Section 148 of the Act was issued, on 18.02.2004. In response to the same, the assessee stated that the return filed, on 30.12.1999, may be treated as a return in response to notice under Section 148 of the Act. Subsequently, the case was discussed with the Assessing Officer wherein, the assessee took a stand that during the assessment year under consideration, the assessee was trying its level best to get orders from the Tamil Nadu Electricity Board and others. Due to low margin offered by the Board, they could not get relevant orders. However, the assessee company's assets such as machinery, vehicles, trucks, furniture and fittings, factory sheds were maintained with the hope of getting orders.

5.Further, the assessee continued all its licenses, telephone and electricity connections and also retained their existing staff strength only with the object of procuring the orders profitable to the assessee company. The assessee could not get sufficient orders from the Electricity Board due to the fact that the value of raw material was very competitive and payments from the electricity boards was not received on time. It was pointed out that for the assessment year 2001-02, the explanation offered by the assessee was accepted by the Tribunal. Therefore, the assessee submitted that the claim of business expenses be allowed due to the above stated facts. The assessment was reopened primarily on the ground that for the year under consideration, there was no manufacturing or sale of any commodity and the other income mainly included electricity and maintenance charges collected from the tenants and paid to the Electricity Board. As against the income, the assessee claimed huge expenditure and loss under the head "business".

6.The Assessing Officer pointed out that the question is whether expenses other than those related to the income from warehousing are allowable while computing the income from house property. It was pointed out that in terms of the provisions of the Act, when income is computed from house property, only prescribed expenses mentioned in Section 24 are to be allowed. However, the assessee incurred certain expenditure on salary, electricity and telephone charges and claimed it as loss under the head "business". The Assessing Officer considered the assessee's submission and held, undisputedly and admittedly, the business of manufacturing and sale of aluminium conductors have stopped once and for all and from 01.04.1998 onwards, there was no manufacture and sale. The assessee would state that they were trying to get business, which would not qualify as a business activity, as only manufacturing/production activity qualifies as the business activity and the assessee has not purchased any article or thing. The business of manufacturing was dead for all commercial purpose.

7.Further, the Assessing Officer held that the assessee was alive to the situation that it had income in the form of lease rentals and the expenditure like telephone, electricity charges and salary was incurred for fulfilling the legal and other formalities of maintaining the assessee company. The income from the lease rentals are taxed under the head "house property" and for the income taxed under the house property, the expenditure incurred on fulfilling the legal and other formalities of the assessee company is not allowable. Therefore, the argument of the assessee that the expenses had to be allowed to continue the business of the assessee company is not sustainable and took note of the Director's report, wherein it has been clearly mentioned that the assessee company is not engaged in the production of conductors.

8.Further, with regard to the plea of depreciation, it was held that depreciation is allowable only if the assets are used for the purpose of business and since the asset has not been put to use, depreciation claim is not allowable. Further, with regard to the order passed by the Tribunal for the assessment year 2001-02, it was observed that the said matter was decided in favour of the assessee on a technical ground.

9.The assessee filed appeal before the Commissioner of Income Tax (Appeals)-XII, Chennai (for brevity, "the CIT(A)"), who by order dated 21.03.2006, affirmed the order passed by the Assessing Officer. The assessee carried the matter by way of appeal to the Tribunal which affirmed the order passed by the CIT(A) and this is how the assessee is before us by way of this appeal.

10.The learned counsel elaborately set down the factual position and endeavoured to convince this Court that the assessee did not close down its business, but was maintaining the machinery such as paying salary to the employees, renewal of license with a faint hope that orders would be placed on the assessee company so as to enable them to revive the manufacturing activity. It is further submitted that the Tribunal ought to have allowed the assessee's appeal, since in respect of the same issue for the assessment year 2001-02, the Tribunal by order dated 31.08.2004, has decided the case in favour of the assessee.

11.It is submitted that the decision of this Court in the case of P.V.Gajapathi Raju vs. CIT reported in (1989) 176 ITR 0238, is clearly distinguishable on facts and the CIT(A) erroneously applied the said decision. It is submitted that in the said case, the assessee was a financier who stopped its business whereas, the assessee in this case had not stopped the business, but had maintained all the facilities which clearly shows that the intention of the assessee is not to discontinue the business.



12.To support her contention, the learned counsel placed reliance on the decision in the case of L.VE.Vairavan Chettiar vs. CIT reported in (1962) 72 ITR 0114 and the decision in the case of CIT vs. L.G.Ramamurthi & Ors., reported in (1977) 110 ITR 0453 (Mad). Further, the learned counsel referred to Section 71 of the Act and submitted that the assessee was entitled to set off the business loss against the income from house property.

13.Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the Revenue submitted that the assessee had filed a return admitting that they had earned income from house property by letting out the warehouse.

14.1. Referring to Section 56 of the Act, which deals with 'income from other sources', it is submitted that in terms of Section 56(1) of the Act, income of every kind which is not to be excluded from the total income under the Act shall be chargeable to income-tax under the head 'income from other sources', if it is not chargeable to income-tax under any heads specified in Section 14, items A to E.

14.2. Referring to sub-Clause (ii) in Section 56(2), it is submitted that income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head “Profits and gains of business or profession”.

14.3. Thus, it is submitted that the assessee was not entitled to seek a set off of what they have incurred as business expenditure especially when, there is no business activity by the assessee.

15.Further, the learned counsel referred to Section 24 of the Act which refers to “income from house property” and in sub-Clause (a) there of, a sum of thirty per cent of the annual value is permissible as deduction and in addition there to, there can be no other deduction.

16.Further, it is submitted that even in the assessment year 2003-04, there was no manufacturing activity and the board of the assessee company passed a resolution and entered into a memorandum of understanding with their sister concern, switched over to marketing of products manufactured by third parties. Thus, it is the submission that without business activity, neither business expenditure, nor business loss can be claimed.

17.Further, it is submitted that there are two types of income, viz., active income where there is requirement to have a business income and there should be an activity such as manufacturing activity whereas, running of property such as in the assessee's case are all passive income and thus, both cannot be mixed up together.

18.In support of his contention, the learned counsel placed reliance on the decision of the Division Bench of the High Court of Allahabad in the case of Chief Commissioner of Income-tax vs. Kisan Sahkari Chini Mills. Ltd., reported in [2005] 145 Taxman 363 (All.) and the decision of the Division Bench of the Bombay High Court in Devi Electronics (P.) Ltd., vs. Income-tax Officer 5(1) (3) reported in [2017] 77 taxmann.com 259 (Bombay).

19.Heard the learned counsels for the parties.

20.The short issue which falls for consideration is whether the appellant is entitled to the benefit of set off of business loss against its other income in respect of the three assessment years under consideration, viz., 1999-2000, 2000-01 and 2002-03.

21.First, let us consider the submission of Ms.Sree Lakshmi Valli, that the Tribunal ought to have followed its earlier decision in the assessee's own case for the assessment year 2001-02. This decision of the Tribunal has been confirmed by the Hon'ble Division Bench of this Court in T.C.A.No.441 of 2005, dated 02.01.2012. In the said appeal, before this Court, two substantial questions of law were framed for consideration, first of which was whether the Commissioner of Income-tax was justified in reversing the assessment order under Section 263 of the Act.

22.The second substantial question of law was whether in the facts and circumstances of the case, business expenditure and business loss can be set off against the income returned by the assessee being only the income from the house property after the closure of the business in the earlier years.

23.We have perused the order passed by the Tribunal against which T.C.A.No.441 of 2005 was filed. We find from the order of the Tribunal that the Tribunal, to come to a conclusion that the assessee did not stop its business, observed that the assessee started distribution and marketing of certain different items of its sister company, since there was a lull in their business, there was a temporary stoppage of manufacture of electrical conductors. This observation was made by the Tribunal to hold that the Commissioner of Income-tax was not justified in invoking the power under Section 263 of the Act. When the matter was carried on appeal by the Revenue to this Court, the Court proceeded on the basis that there were two lines of activities and they are interconnected, inter-dependence and unity to show the common management. The Division Bench affirmed the order passed by the Tribunal that there was a temporary stoppage of business. Subsequently, the assessee continued the business in distributorship. Unfortunately, the factual position being, even in the assessment year 2003-04, no business activity was commenced, viz., the business activity of the assessee, that is, manufacture of aluminium conductors. The business activity started by the assessee in the assessment year 2003-04 was entirely a new line of activity and the Board of Directors passed a resolution, memorandum of understanding was entered into and it is not a manufacturing activity, but a trading or a distribution activity. Therefore, we are of the considered view that the decision rendered by the Tribunal for the assessment year 2001-02 cannot render any assistance to the case of the assessee, more particularly when the substantial issue in the said year was whether power under Section 263 of the Act could have been invoked by the CIT(A). Therefore, the first contention raised by the learned counsel for the assessee stands rejected.

24.Next we move on to consider as to whether the finding rendered by the two authorities, viz., the Assessing Officer and the CIT(A), and the Tribunal, was just and proper. We find that the order passed by the Assessing Officer to be a reasoned order. Equally, we find the order passed by the CIT(A) was also a well reasoned order. Equally, the Tribunal also for its part, examined the factual position and rendered the finding. It is not in dispute that the assessee had stated that they are in the business of manufacture of electrical conductors. Therefore, to state that by keeping the machinery idle, they would still qualify as a manufacturing unit is a proposition which can never be accepted. In fact, the Division Bench in the case of P.V.Gajapathi Raju (supra) took note of such a decision which arose before the Hon'ble Supreme Court. At this juncture we quote paragraph 4 of the said judgment:-

> “4. It is not in dispute that during the accounting years relevant to the two assessment years in question, the assessee had not made any fresh advance or entered into hire-purchase transactions, but that he had been merely collecting or attempting to collect the outstandings due to him by taking proceedings against his debtors. Factually, therefore, the business transactions of the assessee were at an end during the accounting years relevant to the assessment years in question. In other words, the assessee had not carried on any activity, which can be described as a business activity, which was capable of producing profit, which could be

charged to tax. The circumstances that the assessee endeavoured his best to collect the outstandings cannot be characterised as a business activity. It is, in this connection, that the decision of the Supreme Court in CIT v. Lahore Electric Supply Co. Ltd. [1966] 60 ITR 1, is relevant. The Supreme Court pointed out that it would be laying down strange law to hold that where a business, in fact, ceased to be run, it must be deemed as continuing because the outstanding liabilities of that business had not been liquidated and business as contemplated is an activity capable of producing a profit and payment of outstanding liabilities is not an activity which can ever produce such a result. To similar effect is the decision in Indraprastha Steel Industries Ltd. v. ITAT (1973) 88 ITR 138 (Delhi). There also, during the accounting period relevant to the assessment year 1967-68, the assessee did not make any purchases, nor did it spend any amount on purchase of stores and spares consumed and had no stock in possession, but it was realising its dues and earned interest on the outstandings from the purchasers of the machinery. Affirming the order of the Tribunal, the court held that merely because the assessee, during the relevant year, engaged itself in realising its assets and had earned interest, it cannot be said that it had engaged in any business. The principle laid down in the aforesaid that it had engaged in any business. The principle laid down in the aforesaid decisions would squarely apply to the facts of this case when it is seen that, during the accounting years relevant to the assessment years in question, the assessee had not made any advance at all or entered into hire-purchase transactions, but had merely been realising the outstandings. In view of the factual finding regarding the cessation of business of the assessee during the accounting years relevant to the assessment years in question, it follows that the Tribunal was quite right in concluding that the assessee had not carried on any business during the assessment years in question.”

25.The Division Bench in P.V.Gajapathi Raju (supra) took note of the decision of the Hon'ble Supreme Court in CIT vs. Lahore Electric Supply Co. Ltd., reported in (1966) 60 ITR 1 (SC), wherein, the Hon'ble Supreme Court held that it would be laying down a strange law to hold that where a business, in fact, ceased to be run, it must be deemed as continuing because the outstanding liability of that business had not been liquidated and business as contemplated is an activity capable of producing a profit and payment of outstanding liabilities is not an activity which can ever produce such a result.

26.Further, reliance was placed on the decision of the Delhi High Court in Indraprastha Steel Industries Ltd., vs. ITAT reported in (1973) 88 ITR 138 (Delhi). We find the factual position in the said case is more or less identical to the case of the assessee. In the said case, the assessee did not make any purchases, nor did spend any amount on purchase of stores and spares consumed and had no stock in possession, but it was realising its dues and earned interest on the outstanding from the purchasers of the machinery. The Court held that merely because the assessee during the relevant year, engaged itself in realising its assets and had earned interest, it cannot be said that it had engaged in any business. In the case of the assessee before us, the assessee does not dispute the fact that they stopped business activity. There was no manufacturing. Consequently, there was no sale. The stand taken by the assessee in the year 2004 while responding to the notice under Section 148 of the Act is by stating that they had retained the machinery, staff, electricity connection, telephone connection, etc., with a faint hope that they will get orders.

27.To be noted that what has been claimed by the assessee in the instant case is, in fact, a business expenditure incurred by them. Thus, in our considered view, the decision in Lahore Electric Supply Co. Ltd. (supra) and Indra-prastha Steel Industries Ltd. (supra) would squarely apply to the case to non-suit the assessee.



28.With regard to the decision in CIT vs. Vikram Cotton Mills Ltd., reported in (1988) 169 ITR 0597 (SC), Ms.Sree Lakshmi Valli relied on the same to demonstrate the intention of the assessee to start the business and not to close down it. In our considered view, the stand taken by the assessee in 2004 while responding to the notice under Section 148 appears to be a clear afterthought and the explanation given by the assessee can hardly qualify to state that there was an intention on the part of the assessee to commence business. This is manifested from the fact that even in the assessment year 2003-04, manufacturing activity did not commence and the assessee switched over to a new line of business, into trading.

29.In the decision in the case of L.VE.Vairavan Chettiar (supra), the Court found that there was nothing to show that the business had been abandoned and the assessee was continued to incur expenditure and it would come up and the business would be successful. In the said factual background, the Court held that the resultant loss being business loss is deductible. The three fact finding authorities have held that the entire business activity have come to a grounding halt. Subsequently, the conduct of the assessee also clearly reveals that the same line of business was never restarted. Therefore, we agree with the view expressed by the Tribunal that the assessee is not entitled for the benefit of set off of business loss which is in fact, business expenditure against the other income for all the three assessment years under consideration.

30.In Kisan Sahkari Chini Mills. Ltd. (supra), it has been held that Section 57 provides for deductions which are admissible from the income taxable under the head "income from other sources". If a particular expenditure falls strictly under the sub-clause of Section 57 of the Act only then it is liable to be allowed as expenses otherwise not. It was further held that expenditure incurred on maintenance of the office and for planning of construction does not fall under any of the sub-clauses of Section 57 of the Act and therefore, the assessee could not have allowed the expenses as deduction from the interest income. Sub-Clause (ii) of Section 56(1) speaks of income from machinery, plant or furniture belonging to the assessee. Admittedly, no such income was generated and therefore, the claim of expenditure to be a business loss and to be set off against the income from house property is a plea which has to be necessarily rejected.

31.For the above reasons, the appeal stands dismissed and the substantial question of law is answered against the assessee.

32.We may hasten to add that we are examining the correctness of an order passed by the Tribunal under Section 260A of the Act and we cannot convert ourselves into the third appellate authority to re-examine and re-appreciate the factual position concurrently recorded by the three authorities. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Income-tax Appellate Tribunal Chennai 'B' Bench, Chennai.

2.The Deputy commissioner of Income-tax,
Company Circle IV(2)(i/c), Chennai-600 034.

3.The Commissioner of Income Tax (Appeals)-XII,
121, Mahathma Gandhi Road, Chennai-600 034.

copy to

The Section Officer,
VR Section, High Court, Madras.

+3cc to Mr.A.Muthukumar, Advocate Sr.53042
+1cc to Mr.Karthik Ranganathan, Sr.53003

T.C. (A) Nos.31 to 33 of 2009

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