IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.21335 of 2011
MP.No.1 of 2011

M/s.Mohan Breweries and Distilleries Ltd.
Rayala Towers, 2nd Floor,
158, Anna Salai,
Chennai-600002 ...Petitioner

--Vs--

1.The Chief Commissioner of Income Tax
Range II
124, MG Road
Chennai-600034.

2.The Commissioner of Income Tax,
Range-III
124, MG Road
Chennai-600034.

3.The Assistant Commissioner of Income Tax,
Company Circle IV (3)
Chennai-600034 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records on the files of the 3rd respondent and quash the impugned order in PAN:AACM2415L/2004-05 DATED 26.07.2011 and consequently the notice for reopening u/s.148 in PAN.AAACM2164L, dated 24.03.2011 and direct the 3rd respondent to drop the reassessment proceedings.

For Petitioner : Mr.R.Venkata Narayanan for
M/s.Subbaraya Aiyar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner challenges an order rejecting the objections raised on assumption of jurisdiction for proceedings of reassessment under the Income Tax Act, 1961 (in short 'Act') in relation to Assessment Year 2004-05.

2. Heard Mr.R.Venkata Narayanan, learned counsel for the petitioner and Mr.Hema Muralikrishnan, learned Senior Standing Counsel for the respondent.

3. The admitted facts are as follows:

i. The petitioner is engaged in the business of power generation and is also running a distillery.

ii. A return of income was filed by the petitioner claiming deduction under Section 80IA of the Act.

iii. The petitioner filed a Report in Form 10CCC as prescribed under Rule 18BBE in support of its claim of deduction under Section 80IA of the Act.

iv. The returns were selected for scrutiny by the Assessing Officer and notice under Section 143(2) dated 21.10.2005 issued calling for attendance of the petitioner along with various details in support of the queries raised by the officer.

v. Questionnaire dated 26.10.2006 was issued indicating various points on which the Assessing Authority sought particulars. The questionnaire specifically refers to the claim under Section 80IA calling for the year of commencement of claim, details regarding the claim of deduction, profit and loss accounts maintained for the undertaking and balance sheet of each unit.

vi. The petitioner also filed a detailed reply dated 23.12.2006 furnishing all materials called for by the officer.

vii. On 29.12.2006, an order of assessment was passed rejecting the deduction claimed under Section 80IA.

viii. The order of assessment was confirmed by an order passed by the first Appellate Authority on 21.03.2007, which was carried in appeal to the Income Tax Appellate Tribunal (Tribunal) and was allowed by the Tribunal on 31.10.2007, granting benefit of deduction under Section 80IA on the current year profit to the petitioner.

ix. This order has, admittedly, been affirmed by this Court and by the Supreme Court in the case of this very petitioner in Commissioner of Income Tax Vs. Mohan Breweries and Distilleries Ltd in Tax Case Appeal No.918 of 20018 and in Special Leave Petition (Civil) No.1729 of 2011 .

x. An order giving effect to the order of the Tribunal was passed by the Assessing Officer on 04.03.2008.

xi. A show cause notice dated 23.11.2009 was issued under Section 263 of the Act by the Commissioner of Income Tax seeking to revise the order of give effect, dated 04.03.2008.

4. The points on which revision was sought to be effected are:

a. The petitioner had filed Form No.10CCC in terms of Rule 18BBE along with return of income Tax which is an incorrect form as per the prescription. The correct form to be filed is Form No. 10CCB.

b. No separate books of accounts have been maintained in respect of unit claiming eligibility for deduction under Section 80IA.

c. While allowing deduction under Section 80IA, the Authority has failed to take into account the provisions of section 80IA(9).

5. After considering the objections raised by the petitioner to the proposal for revision, an order came to be passed by the Commissioner of Income Tax on 26.03.2010 dropping the proposal for revision on points (a) and (b) above. As far as point (c) is concerned, that is, the application of the provisions of Section 80IA(9) of the Act, the proposal was confirmed and the issue remanded to the file of the Assessing Authority.

6. Thereafter, a notice under Section 148 of the Income Tax was issued on 24.03.2011. The petitioner, vide its communication dated 24.03.2011, requested the Assessing Authority to treat the return of income originally filed, as filed in response to the notice under Section 148 and also sought a copy of the reasons upon which the reopening had been effected.

7. On 12.05.2011, four fold reasons were furnished by the Assessing Authority. They are:

i. Form prescribed in support of the claim under Section 80IA had not been filed.

ii. Separate books of account had not been maintained for the unit claiming eligibility.

iii. Depreciation had been claimed in respect of a Windmill which was not eligible for deduction as per the provisions of the Act.

iv. Depreciation has been claimed on an imported car which was not liable to be granted in terms of proviso (1) to Section 32 (1) of the Act.

8. Objections were filed by the petitioner in line with the judgment of the Supreme Court in the case of Gkn Driveshafts (India) Ltd vs Income Tax Officer And Ors [259 ITR 19], which set out the appropriate procedure to be followed in the matter of reassessments as follows:

> 4. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

9. Overruling the objections, the Assessing Officer has passed the impugned order confirming that the jurisdiction assumed by him was proper, as against which, petitioner has filed the present writ petition.

10. The legal question raised for resolution is whether the impugned proceedings are barred by limitation. The provisions of Section 147 of the Act provide for a limitation of four years for initiation of proceedings for reassessment. A further period of two years is granted in those cases where the conditions stipulated in the proviso to Section 147 are satisfied. The relevant provision and the proviso thereto are extracted below:

> Income escaping assessment
>
> 147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to

the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material fact necessary for his assessment, for that assessment year:

11. The conditions precedent provided for availment of the extended period of limitation are (i) that the escapement of income should be by virtue of failure of the assessee to file a return of income or (ii) to disclose fully and truly all material facts necessary for the assessment of income for that year. In the present case, the petitioner has, admittedly, not defaulted in the filing of a return of income. Thus, the only condition to be satisfied by the revenue would be the establishment of the fact that there has been a failure by the assessee to make a full and true disclosure of material particulars.

12. Adverting to paragraph 8 of this order setting out the reasons for re-assessment, I note that items (i) and (ii), have, admittedly, been considered by the Commissioner of Income Tax in his order under Section 263 dated 26.03.2010 and thus, it does not lie in the mouth of the Department to state that material particulars in regard to those two issues were not available on record.

13. As far as deduction under Section 80IA, is concerned, a perusal of the proceedings commencing from the filing of return of income by the petitioner would reveal that all material particulars in respect of the claim under Section 80IA were available on file. If at all the Officer was of the view that the materials had been incomplete or did not support the claim

adequately, it was for the Authority to have taken action in that regard even at the first instance and not by way of re-assessment. It is also relevant to state that the reasons for re-assessment commence with the phrase 'upon an examination of the return of income and other enclosures'. Thus, the proceedings for re-assessment are initiated based wholly on the materials available on record only and this is an admitted position.

14. Revenue counsel relies on the judgment of the Supreme Court in the case of Calcutta Discount Co.Ltd. Vs. Income Tax Officer [41 ITR 191]. This judgment hardly supports the case of the Revenue in so far as the ratio therein is that a re-assessment would be legally tenable only if the assessee had failed to disclose primary and material particulars. In the present case, the primary and material particulars as far as deduction under Section 80IA are concerned, are admittedly, on record.

15. I am thus of the considered view that the impugned proceedings for re-assessment are barred by limitation. I draw support in this regard on a judgment of the Supreme Court in the case of Assistant Commissioner of Income Tax, Mumbai and Others Vs. ICICI Securities Primary Dealership Ltd [348 ITR 299] wherein, the Bench holds that the extended period of limitation cannot be availed by the Department when all primary particulars were, admittedly, available on file. The judgment is extracted below:

> Leave granted.
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> 2. We have heard learned counsel on both sides.
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> 3. The assessee had disclosed full details in the return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his Order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order re-opening the assessment was not maintainable.
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> 4.The civil appeal is, accordingly, dismissed.

16. The assessee in this case has disclosed all materials particulars relating to the issue of deduction under Section 80IA concerned even at the original instance and thus, the re-assessment in so far as it relates to this issue, is quashed.

17. Coming to the issue of grant of depreciation on imported car, I find that this issue has not been challenged and the re-assessment on this score is thus confirmed. The writ petition is allowed to the extent indicated above. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Commissioner of Income Tax,
Range II,
124, MG Road,
Chennai-600034.

2.The Commissioner of Income Tax,
Range-III,
124, MG Road,
Chennai-600034.

3.The Assistant Commissioner of Income Tax,
Company Circle IV (3),
Chennai-600034.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate Sr.87144
+1cc to Mrs.Hemamuralikrishnan, Advocate Sr.87058

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srg 23/01/2020