



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM

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

Tax Case Appeal Nos.357 and 358 of 2019
and C.M.P.No.12259 of 2019

Principal Commissioner of Income Tax I,
No.63, Race Course Road,
Coimbatore. .. Appellant in both Appeals/Appeals

-vs-

M/s.Anugraha Valve Castings Ltd.,
S.F.No.391/2, Sengods,
Goundenpudur, Arasur Village,
Coimbatore-641 005.
PAN: AACCA2285Q .. Respondent in both Appeals/Respondent

Appeals under Section 260A of the Income-tax Act, 1961
against the order dated 15.10.2018 on the file of the Income Tax
Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.379/Chny/2018
and C.O.No.62/Chny/2018 in I.T.A.No.379/Chny/2018 for the
assessment year 2012-13.

against the Order of the the Commissioner of Income Tax
(Appeals - I), Coimbatore, dated 14/11/2017 made in 28/15-16
against the Deputy Commissioner of Income Tax, Corporate Circle
2, Coimbatore dated 17/03/2015 made in PAN.No. AACCA 2285a
assessment Year 2012-2013.

For Appellant : Mr.T.R.Senthil Kumar,
(In both Appeals) Senior Standing Counsel

For Respondent : Mrs.Sree Lakshmi Valli
(In both Appeals)

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

These appeals, by the Revenue filed under Section 260A of
the Income-tax Act, 1961 (hereinafter referred to as "the Act"),
are directed against the common order passed by the Income-tax



Appellate Tribunal 'B' Bench, Chennai (for brevity, "the Tribunal"), in I.T.A.No.379/Chny/2018 and C.O.No.62/Chny/2018 in I.T.A.No.379/Chny/2018 for the assessment year 2012-13.

2.The above appeals have been filed by the Revenue raising the following substantial questions of law:-

"(i) Whether the ITAT is correct in law in holding that the assessee is eligible to claim deduction u/s 80IA, which was not claimed in the return of income, after insertion of provisions vide Sec. 80A(5) in the Finance Act 2009?

(ii) Whether the ITAT is correct in law by allowing the fresh claim of the assessee with respect to the "Loss on Cancellation of Forward Contracts" and "M to M Loss - Provisions Written Back" by relying case laws which are distinguishable to the facts of the assessee's case.

(iii) Whether the ITAT is correct in not applying the ruling of the Hon'ble High Court in the case of M/s.Lakshmi Card Clothing Manufacturing Company P Ltd. vs DCIT (TCA No.944/2008), wherein it was held that a company with a team of financial and legal experts cannot plead ignorance of not claiming reliefs?"

3.There are two appeals filed by the Revenue against the common order of the Tribunal; one against the order rejecting the appeal filed by the Revenue; and one against the order allowing the cross objection filed by the assessee. However, the substantial questions of law in both the appeals are identical and therefore, we have taken up both the appeals together.

4.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue; and Mrs.Sree Lakshmi Valli, learned counsel for the respondent/assessee.

5.The assessee, who is engaged in the manufacture and export of steel and alloy steel castings, filed its return of income on 28.09.2012 admitting a total income of Rs.29,67,24,050/- under normal provisions; and book profit of Rs.28,15,50,064/- under Section 115JB of the Act. During the course of assessment proceedings, the assessee filed a letter dated 24.12.2014 requesting for consideration of the following three documents:-

(i) Mark to Market (M to M) loss provision written back to be reduced from the income - Rs.4,26,56,000/-;

(ii) Actual loss on cancellation of forward contracts during AY : 2011-12 to be allowed - Rs.2,56,15,530/-; and

(iii) Claim for deduction u/s 80IA in respect of income from



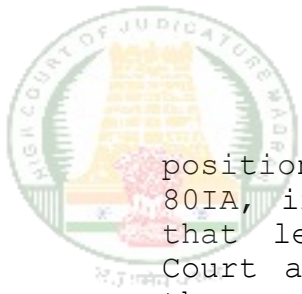
Windmills.

6.The Assessing Officer did not entertain the claims by referring to the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd., vs. CIT reported in (2006) 284 ITR 323 (SC) and held that deduction from the total income could be claimed only by filing a revised return of income and since the assessee did not file the revised return of income for claiming the aforementioned three deductions, the claims are not acceptable. In respect of the claim of deduction under Section 80IA of the Act, the Assessing Officer held that Statutory Form No.10CCB having been filed only during the assessment proceedings, the same cannot be entertained.

7.The assessee filed appeal before the Commissioner of Income Tax (Appeals)-1, Coimbatore (for brevity, "the CIT(A)"). Apart from raising various factual contentions, it was submitted that the decision in Goetze (India) Ltd. (supra) would not apply to the facts of the assessee's case, as the failure to claim the aforesaid losses and deduction under Section 80IB in the original return of income is not intentional but a bona fide omission. Further, it was contended that the Assessing Officer ought to have taken into consideration the audit report which was filed in the course of assessment proceedings, which is due compliance of the procedural requirements. The CIT(A) considered the submission made by the assessee, the stand taken by the Assessing Officer and held that even in the decision in Goetze (India) Ltd. (supra), it has been held that the appellate authorities can allow additional grounds, if to be raised by the assessee in the appeal if it is found that those grounds were not raised on account of any wilful omission and the assessee has a reasonable explanation.

8.The CIT(A) relied on a decision of the Division of this Court in the case of CIT vs. Abhinitha Foundation (P) Ltd., reported in [2017] 99 CCH 0037 Chen High Court, wherein, it was held that even if the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if the relevant material was available on record either by the appellate authorities, which includes both the CIT(A) and the Tribunal by themselves, or on remand by the Assessing Officer. The CIT(A) after considering the facts of the case, found that the details of provisions and the actual loss relating to that year was on record and it was an inadvertent omission crept in while preparing the memo of income.

9.With regard to the loss incurred on cancellation of forward contract, on facts, the CIT(A) found that it is an act of omission on account of erroneous belief of complex legal



position. With regard to the claim of deduction under Section 80IA, in respect of the income free windmills, the CIT(A) noted that legal disputes were pending before the Hon'ble Supreme Court and various Courts at the time of filing of returns and there was uncertainty in the legal position which could be taken as a reasonable cause for the assessee not claiming the deduction in the return of income. Further, it noted that all the facts are already recorded in the books and are available for verification.

10.The CIT(A) took note of the decision of the Tribunal in the case of M/s.Precot Meridian Ltd. vs. ACIT, Company Circle I (1), Coimbatore in ITA No.1216/Mds/2012 and held that identical issue was considered in the said case, wherein, belated claim was made before the Assessing Officer in the course of assessment proceedings. Relying on the decision of the Hon'ble Supreme Court in NTPC vs. CIT reported in [1996] 229 ITR 383 (SC), it was pointed out that the purpose of assessment proceedings before the Tax Authorities is to assess correctly the tax liability of an assessee in accordance with law. Thus, by following the aforementioned decisions, the appeal filed by the assessee was allowed.

11.On appeal before the Tribunal, the Tribunal agreed with the view taken by the CIT(A), inasmuch as it followed the decision of the Hon'ble Supreme Court in NTPC (supra) and accordingly, dismissed the appeal filed by the Revenue and allowed the cross objection filed by the assessee.

12.Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue strenuously contended that the Assessing Officer rightly held that the three claims which were made by the assessee during the course of assessment proceedings cannot be considered without a revised return having been filed by the assessee, though the assessee had time to file the same. In this regard, the learned counsel submitted that the Assessing Officer rightly followed the decision in the case of Goetze (India) Ltd. (supra) and the CIT(A) and the Tribunal erred in reversing the finding recorded by the Assessing Officer.

13.Further, in support of his contention, the learned relied on a decision of this Court in the case of M/s.Lakshmi Card Clothing Mfg. Co (P) Ltd., vs. The Deputy Commissioner of Income Tax [T.C. (A) No.944 of 2008, dated 24.09.2018]. The Hon'ble Supreme Court in NTPC (supra) held that the purpose of assessment proceedings before the Tax Authorities is to assess correctly the tax liability of an assessee in accordance with law. If the reason given by the assessee is reasonable and not vitiated by any mala fide reasons, we are of the view that technical issues should not be a bar for the assessee to place



material before the Assessing Officer. Similar view has been taken by this Court in Abhinitha Foundation (P) Ltd. (supra) in which, the Court noted the decision in NTPC (supra) and also the decision of the Division Bench of this Court in Ramco Cements Limited vs. DCIT reported in (2015) 55 taxmann.com 79 (Madras); and CIT vs. Malind Laboratories P. Ltd., [T.C.(A) No.878 of 2014, dated 18.11.2014]. Admittedly, claim was made by the assessee during the assessment proceedings, at the stage when notice under Section 143(2) of the Act was issued to the assessee.

14. On a reading of the assessment order dated 17.03.2015, it is evidently clear that books of accounts and all the details were furnished to the Assessing Officer which was perused by the Assessing Officer and the case was discussed with the authorized representative of the assessee. In such situation, the assessee's case was foreclosed solely on the ground that he had not filed revised return of income. This very issue was considered and it was held that the appellate authorities can allow additional grounds to be canvassed, if it is found to be bona fide and the omission to seek for such relief was a bona fide omission.

15. In the instant case, the records clearly show that all the details were available with the Assessing Officer and no fresh details were required to be filed or taken into consideration. In such circumstances, we agree with the view taken by the Tribunal in confirming the order passed by the CIT (A).

16. So far as the decision in M/s. Lakshmi Card Clothing Mfg. Co (P) Ltd. (supra) is concerned, the assessee filed a return of income for the assessment year 1994-95 on 2p.11.1994. A notice under Section 143(1)(a) of the Act, dated 01.03.1995, was issued and the assessment was completed under Section 143(3) by order dated 30.03.1995. The Assessment order was served on the assessee on 05.04.1995. Thereafter, on 22.04.1996, the assessee filed a petition under Section 154 of the Act contending that the assessment suffers from mistake apparent on the face of the record and it requires to be rectified. In the said petition, it was contended that for the assessment year 1995-96, i.e., subsequent year, the claim for deduction under Section 80I of the Act was allowed in favour of the assessee, by order dated 29.03.1996, and based on the said order, they sought for revising/rectifying the assessment order dated 30.03.1995 for the assessment year 1994-95. Considering these facts, the Court held that the assessee did not make any claim for deduction under Section 80I of the Act for the relevant assessment year and if the interpretation sought to be given by the assessee is to be accepted, it would mean that the Assessing Officer should virtually sit in the office of the assessee and help the



assessee to file the return. Apart from that, it was held that power under Section 154 of the Act is exercisable only when mistake is manifest and could be identified by a mere look which does not need a long drawn process of reasoning and a mere mistake by itself cannot be a ground to invoke Section 154 of the Act.

17.The decision in the case of M/s.Lakshmi Card Clothing Mfg. Co (P) Ltd. (supra) can have no application to the facts of the present case.

18.For the above reasons, these tax case appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

abr

To

- 1.The Deputy Commissioner of Income-tax,
Corporate Circle-2, Coimbatore.
- 2.The Commissioner of Income Tax (Appeals)-1,
Coimbatore.
- 3.The Income Tax Appellate Tribunal 'B' Bench, Chennai.

+1cc to Mr.T.R.Senthi kumar, Advocate, S.R.No. 48909

T.C.A.Nos.357 and 358 of 2019

VG II(CO)
GN(01/08/2019)