IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.4808 of 2014
and M.P.No.1 of 2014

M/s. Scientific Publishing Services Pvt. Ltd.,
Represented by its Chief Financial Officer and Company Secretary, Sri S.Dayalu
No.6 & 7, 5th Street,
SPS Building, Mylapore,
Chennai - 600004. ...Petitioner

Vs.

Deputy Commissioner of Income Tax,
Company Circle VI(1),
7th Floor, New Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600034. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in C.No.Co.Cir.VI (1)/Reassessment/2013-14 dated 20.01.2014 relating to the Assessment Year 2007-08 on the file of the respondent and quash the same.

For Petitioner : Mr.N.V.Balaji
For Respondent : Mr.A.P.Srinivas
Standing Counsel

ORDER

The petitioner is aggrieved against the proceedings of the respondent dated 20.01.2014 relating to the Assessment Year 2007-08, wherein and whereby, the objections filed by the petitioner against the reopening of the assessment was rejected.

2. The case of the petitioner in short is as follows :-

(a) The petitioner is a Company engaged in the business of provision of diversified knowledge processing etc. The petitioner is an assessee under the respondent and has been filing returns of income with all required Annexures within the stipulated time. Section 10B of the Income Tax Act, 1961 provides for a deduction of 100% of the profits derived by a

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newly established 100% Exported Oriented Undertaking. Section 10B(3) as existed prior to 01.04.1999 reads as follows:-

> "(3) The profits and gains referred to in sub-section (1) shall not be included in the total income of the assessee in respect of any ten consecutive assessment years, beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things, specified by the assessee at his option."

(b) The petitioner has set up a Unit engaged in the manufacture and export of computer software in the Financial Year 1996-97 i.e. the Assessment Year 1997-1998. The provisions of Section 10B, as it stood prior to 01.04.1999, granted to an assessee, a tax holiday benefit in respect of any five consecutive assessment years from within a block of eight years, of income derived from the manufacture and export of computer software. The period of five years was extended to ten years, vide amendment to Section 10B(3) vide Finance Act, 2000 with effect from 01.04.1999 which reads as follows :-

> "(3) The profits and gains referred to in sub-section (1) shall not included in the total income of the assessee in respect of any [ten] consecutive assessment years, [***] beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things."

(c) Units that claimed a benefit under Section 10B were eligible to claim the same for the unexpired period of ten years commencing from the first year of claim. The petitioner opted to claim of deduction commencing from the Assessment Year 1998-99. Such option is available to the assessee insofar as the provisions of Section 10B granted a relief in respect of any five Assessment Years falling within a period of eight years. The consistent legal position adopted by the petitioner is thus, that it is entitled to claim deduction under Section 10B of the Act for a period of ten years commencing from the Assessment Year 1998-99 in terms of the law prevailing at the relevant point of time.

(d) Returns of income were filed by the petitioner from the Assessment Year 1998-99 onwards claiming deduction under Section 10B of the Act. The Income Tax Department, after a thorough scrutiny of the returns filed by the petitioner, accepted the entitlement of the petitioner to claim deduction under Section 10B in respect of the Assessment Years commencing from 1998-99 for the period of 1998-99 to 2007-08. While this is so, the

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petitioner states and submits that with respect to Assessment Year 2007-08, a return of income was filed on 17.10.2007 returning total income of an amount of Rs.1,57,325/- and claiming deduction of an amount of Rs.64,82,19,112/- under Section 10B of the Act. The assessment was taken up for detailed scrutiny by the respondent by issuing notice under Section 143(2) of the Act dated 18.07.2008. All the particulars sought for were duly furnished by the petitioner to the respondent. Since the petitioner was also engaged in international transactions, the matter was referred to the Transfer Pricing Officer to verify the Arm's Length Price in relation to the international transactions. The Transfer Pricing Officer vide order dated 29.10.2010 under Section 92CA (3) of the Act suggested an adjustment of Arm's Length Price. Pursuant thereto, an order of draft assessment was passed by the Assessing Officer, wherein, apart from incorporating the adjustments, as suggested by the Transfer Pricing Officer, the Assessing Officer effected an adjustment to the computation of deduction under Section 10B of the Act.

(e) Thus, the Assessing Authority accepted the eligibility of the petitioner to relief under Section 10B. In respect of other issues arising out of draft assessment order, the petitioner filed their objections before the Dispute Resolution Panel. The said authority, while deleting the transfer pricing adjustment, has however decided the adjustment relating to methodology of computation of deduction under Section 10B was decided against the petitioner. The said order was challenged before the Income Tax Appellate Tribunal. By order dated 11.05.2012, the Tribunal allowed the appeal of the petitioner. Thus, the adjustment made and confirmed by the Dispute Resolution Panel relating to the computation relief under Section 10B was reversed by the Income Tax Appellate Tribunal, insofar as it related to ensuring parity between the export turnover and import turnover while computing the deduction under Section 10B of the Act. At this juncture, it is relevant to point out that the Income Tax Department did not, at any stage of proceedings before any of the authorities, raise any dispute regarding the eligibility of the petitioner herein to claim or be granted the relief under Section 10B of the Act.

(f) While this is so, the petitioner was surprised to receive a notice dated 26.03.2013, proposing to reopen the assessment in respect of the Assessment Year 2007-08 by stating that the respondent has reason to believe that income charged under the tax relevant to the said Assessment Year had escaped assessment. In response to the said notice, the petitioner filed a return of income and sought the reasons for reopening the assessment. The respondent through communication dated 29.10.2013, furnished the reasons. The petitioner filed their

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objections against the reopening through communication dated 18.11.2013. However, the Assessing Officer rejected the objections and passed the impugned order on 20.01.2014. Hence, the present writ petition is filed before this Court.

3. The respondent filed a counter wherein, it is stated as follows :-

(a) As per provisions of Section 10B prior to 01.04.1999, the relief is granted in respect of any five assessment years falling within a period of eight years. But the provisions of Section 10B with effect from 01.04.1999, granted a relief for a period of ten consecutive Assessment Years beginning with the Assessment Year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software. The petitioner wrongly interpreted the provisions of Section 10B to his own benefits for the period of ten years commencing from the first year of claim i.e. from the Assessment Year 1998-99. But the petitioner was actually eligible to claim a benefit under Section 10B from the assessment year relevant to the previous year in which the Company began to manufacture, i.e. from the Assessment Year 1997-98. The petitioner cannot combine both the amendments and claim the benefit in the 11th year when the Act does not allow it.

(b) Before issuance of notice under Section 148 of the Act, the dispute was related to computation of relief. Later, it was brought to the notice of the respondent that the petitioner claimed deduction under Section 10B of the Act in the 11th year i.e. Assessment Year 2007-08, from the Assessment Year relevant to the previous year in which the company begun to manufacture i.e. Assessment Year 1997-98. This issue was not fully and truly disclosed by the petitioner during any other proceedings before the respondent or any other Appellate Authorities. When the respondent noticed that the eligibility of claim of deduction in the Assessment Year 2007-08 itself was wrong, he issued the notice under Section 148 of the Act rightly as per the provision under Section 147 of the Act.

(c) While inserting the Section 10B in the Finance Act, 1988, w.e.f. 01.04.1989, the petitioner have option to seek relief for the year when the activities of manufacture resulted in income between the block of 8 years and not in the years where the activities of manufacture resulted in loss. Later, this Section was amended, which restricted the petitioner's relief for ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture, irrespective of income or loss eared by the petitioner. When there was an option to the petitioner to pick any five assessment years falling within a

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period of eight years, the petitioner enjoyed the relief whenever it earned income. But, when the act amended so that relief will be allowed for a ten consecutive years from the commencement of manufacture, the petitioner refused to accept the eligibility of claiming deduction under Section 10B of the Act automatically expired by the Assessment Year 2006-07 even though this position of law is well within the knowledge of the petitioner.

4. Mr.N.V.Balaji, learned counsel appearing for the petitioner submitted as follows :-

The respondent having examined the issue of eligibility under Section 10B in detail at the time of original assessment and accepted the same, more particularly, when all particulars and details required have been duly furnished by the Assessee, is not justified in reopening the assessment by taking a different view with regard to the claim of deduction under Section 10B. There is no failure on the part of the petitioner to disclose any details in respect of the claim made. The impugned reopening proceedings have been initiated beyond a period of four years from the end of the relevant Assessment Year and since there has been no failure to make a full and complete disclosure of all material particulars, the bar of limitation set out in the proviso to Section 147 is attracted. The petitioner claimed the benefit of deduction under Section 10B by relying upon Section 10B (3) of the Income Tax Act, as existed prior to 01.04.1999. The benefit of deduction was claimed by the petitioner not from the first year from the date of manufacture but on the other hand from the second year of the date of manufacture, in view of the fact that Section 10B(3), as existed prior to 01.04.1999 permitted to take benefit of five consecutive years falling within a period of eight years beginning with the Assessment Year relevant to the previous year, in which the undertaking begins to manufacture. Therefore, the materials detail furnished by the petitioner at Serial No.6 and 7 filed along with the return, are proof and actual particulars and therefore, the respondent is not justified in taking a different view based on the materials already furnished and existed at the time of original assessment. The very same issue with regard to 10B deduction came up for consideration before this Court in "MBI Kits International Vs. ITO" case reported in "[2018] 408 ITR 1 (Madras), wherein, this Court found that the reopening was bad since the Assessing Officer therein, has originally chosen to allow the deduction based on the materials filed already, and thereafter, changed his opinion and has chosen to reopen the assessment, which cannot be done after a period of four years.

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The above said decision of this Court was confirmed in writ appeal in W.A.No.200 of 2019 dated 24.06.2019.

5. Per contra, Mr.A.P.Srinivas, learned standing counsel appearing for the respondent after reiterating the contentions raised in the counter affidavit further submitted as follows :-

The petitioner is not entitled to seek benefit under Section 10B of the Act, both under the said provisions as existed prior to 01.04.1999 and after the amended Act in 1999. The petitioner, infact, has not disclosed true and full materials fact while filing the return. The petitioner has wrongly claimed the number of consecutive year as 10th year for claiming the deduction for unit No.1 while infact, it is only 11th year. He further submitted that in view on the decision made by the Apex Court in "Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited" case reported in "2010 320 ITR 561", the Assessing officer has rightly reopened the assessment and therefore, the same need not be interfered by this Court. The learned counsel further pointed out that the decision relied on by the learned counsel appearing for the petitioner in MBI Kits International case, is factually distinguishable and therefore, the same cannot be applied to the present facts and circumstances.

6. Heard both sides and perused the materials placed before this Court.

7. The point for consideration in this writ petition is as to whether the reopening of the assessment relevant to Assessment Year 2007-08 beyond the period of four years, can be sustained on the reasons stated by the Assessing Officer which was confirmed in the impugned order.

8. In respect of the relevant Assessment Year 2007-08, admittedly, the notice under Section 148 was issued on 26.03.2013 after a period of four years. Therefore, it is to be seen as to whether the petitioner has failed to disclose true and full material particulars before the Assessing Officer at the time of filing the original return. In this case, the issue involved for reopening is based on the claim made under Section 10B of the Income Tax Act. According to the petitioner, date of commencement of manufacture of the product was 01.04.1996.

9. The respondent is not disputing the above said date of commencement of manufacture. The dispute is in respect of the claim of the petitioner regarding the number of consecutive year for which the deduction is claimed at Serial No.8 of Annexure-A filed along with return for the Assessment Year 2007-08. The

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petitioner has referred the number consecutive years as 10th year for unit 1. It is contended by the petitioner that since the deduction was claimed from the second year of the commencement of manufacture, the number of consecutive year is correctly referred to as 10th year at Serial No.8 and therefore, the petitioner has not made any false statement. It is to be noted at this juncture that though, the relevant provisions under Section 10B (3) prior to amendment made in the year 1999, granted the benefit of deduction for five consecutive assessment years falling within a period of eight years beginning with the Assessment Year relevant to the previous year in which the undertaking begins to manufacture, the Assessing Officer has granted deduction to the petitioner for continuous nine years till the Assessment Year 2007-08.

10. Therefore, I do not think that the Revenue is justified in contending that the petitioner is entitled only for five consecutive assessment years as covered under Section 10B (3), as existed prior to 01.04.1999 and contend that the present claim made by the petitioner is based on any false information. Even otherwise, this Court has to only see that as to whether these two relevant dates referred to at Serial Nos.7 and 8, are factually incorrect, so as to derive a conclusion that the petitioner has not truly and fully disclosed the material facts. As this Court finds that there is no dispute with regard to the date of commencement of manufacture of the product namely 01.04.1996, when the petitioner has chosen to claim direction from the second year onwards, the number of consecutive years for which deduction is claimed referred to at Serial No.8 is certainly the 10th year and therefore, such statement by the petitioner at Serial No.8, cannot be termed as false statement or claim.

11. When such being the position, I find that the Assessing Officer is not justified in reopening the assessment in the absence of failure on the part of the assessee to truly and fully disclose the material fact. At this juncture, it is relevant to note that the finding rendered by this Court in MBI Kits International case at paragraph Nos.15 and 16 which reads as follows :-

> "15. According to the Revenue, if the date of commencement of manufacture or production referred to in the Column No.7 in Form No.56G as 28.03.2000 is taken as true, the deduction claimed was at the eleventh year and not at the tenth year. The petitioner seeks to explain that the entry made in Column No.7 of Form 56G was by mistake and on the other hand, the actual date of commencement of manufacture was only on

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25.05.2000. At the same time, Column No.8, which deals with number of consecutive year for which the deduction claimed, was rightly stated as tenth year. Therefore, the question that arises for consideration, under the above stated circumstances, is as to whether these contradictory statement made by the petitioner can be brought under the purview of non disclosure of fully and truly all material facts necessary for his assessment, to attract the extended period of limitation.

16. No doubt, Column No.7 and 8 contradicts each other with regard to the commencement of manufacture. However, when one of such column has specifically referred the number of consecutive year as the tenth year to claim 10B deduction and when the Assessing Officer has also considered and allowed such deduction, it has to be construed that such deduction was granted by the Assessing Officer by forming his opinion based on the conjoined consideration of materials already placed. In other words, it cannot be stated that the petitioner has availed the benefit under Section 10B by giving false details. If the date of manufacture as referred to in Form 56G is taken as the right date, the Assessing Officer ought not to have allowed the deduction. Likewise, if the number of consecutive year referred to in Form 56G as tenth year is taken as the true statement, the Assessing Officer was right in allowing the deduction. Therefore, it is evident that by furnishing the wrong date of manufacture as 28.03.2000, the petitioner has not either deceived or suppressed any material fact before the Assessing Officer to claim deduction under Section 10B. If the exact date of manufacturing could be ascertained or gathered from the conjoined consideration of other material documents, such as relevant certificates of registration by the competent authority, mere wrong mentioning of the date in Column 7 cannot be construed as non disclosure of true and material facts, especially when column 8 of statement supports the claim. One can understand and appreciate the stand of the Revenue for reopening the assessment, if the assessee, by giving a false information regarding the date of commencement of manufacture as 28.03.2000 alone, had obtained deduction under Section 10B. Thus, it is seen that the Assessing Officer, who has originally chosen to allow the deduction based on the materials filed already, has now changed his opinion and has chosen to reopen the

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assessment, which in my considered view, cannot be done after a period of four years."

12. It is further seen that the said order of this Court was confirmed by the Division Bench in writ appeal in W.A.No.200 of 2019 dated 24.06.2019 wherein, it is observed as follows :-

> "Keeping aside all these issues, we have examined the correctness of the order passed by the learned Single Bench and we note with approval the findings of the learned Single Bench in paragraphs 16 and 17 of the impugned order. The above finding rendered by the learned Single Bench is just and proper. As pointed out by the learned Single Bench every non-disclosure of material facts will not or cannot be a justifiable reason for reopening an assessment. We reiterate that what was required to be considered is that, substance over form. Therefore, we are of the considered view that the learned Single Bench was perfectly right in allowing the writ petition which had been done after thorough examination of the facts and the legal position. In our considered view the revenue has not made out any grounds to interfere with the order passed by the learned Single Bench."

13. Therefore, this Court, is of the view that going by the facts and circumstances of the case, the reopening is barred by limitation, as the Assessing Officer has not satisfied that the assessee has failed to disclose the material facts truly and fully. Accordingly, this writ petition is allowed and the impugned order is set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

The Deputy Commissioner of Income Tax,
Company Circle VI(1), 7th Floor, New Block, Aayakar Bhavan,
121, Mahatma Gandhi Road, Nungambakkam,Chennai - 600034.

+1 cc to M/s.A.P.Srinivas, Advocate Sr.No. 95804
+1 cc to M/s.N.V.Bajai, Advocate Sr.No. 96512

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