

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	03.12.2020
Pronounced On	06.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.3967 of 2009

M/s.Craftsman Automation P Ltd.,
rep. by reg. Director,
15, LML Colony, Amman Kulam Road,
Coimbatore - 641 037. ... Petitioner

Vs.

- 1.The Commissioner of Income Tax - II,
Race Course Road,
Coimbatore.
- 2.The Assistant Commissioner of Income Tax,
Race Course Road, Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of Petitioner in C.No.221(1)/2007-08/CIT-II/CBE on the file of the first respondent and quash the impugned order dated 26.03.2008 and consequently, direct the respondents to grant deduction u/s. 80JJAA of the Act to the extent of Rs.20,65,976/- in the computation of taxable total income in the previous year relating to the Assessment Year 2004-05.

For Petitioner : Mr.A.S.Sri Raman for
Mr.S.Sridhar

For Respondents: Mr.A.N.R.Jayaprathap
Standing Counsel.

O R D E R

The petitioner is aggrieved by the impugned order dated 26.03.2008 bearing reference No.C.221(1)/07-08/CIT-II/CBE passed by the 1st respondent under Section 264 of the Income Tax Act, 1961, for the Assessment Year 2004-05.

2. By the impugned order, the 1st respondent has dismissed the application filed by the petitioner under the aforesaid

provision of the Income Tax Act, 1961.

3. The petitioner had filed income tax return for the Assessment Year 2004-2005 on 01.11.2004. Thereafter, an assessment order was passed on 29.12.2006.

4. The Petitioner thereafter filed an application dated 02.01.2007 under Section 154 of the Income Tax Act, 1961 before the 2nd respondent, for rectification of mistake of the assessment order dated 29.12.2006. By an order dated 17.01.2007, the assessment order passed on 29.12.2006 for the Assessment Year 2004-05 was modified under Section 154 of the Income Tax Act, 1961.

5. The petitioner thereafter filed a revised return and claimed the benefit of deduction under Section 80JJAA of the Income Tax Act, 1961 and claimed refund of Rs.3,04,291/- in terms of the rectification order dated 17.01.2007.

6. However, the 2nd respondent refused to act on the revised return. The reason given by the Petitioner for filing revised return was that by mistake, the petitioner failed to avail the benefit of deduction under Section 80JJAA of the Income Tax Act, 1961.

7. During the interregnum, the impugned order dated 26.03.2008 was passed by the 1st respondent under Section 264 of the Income Tax Act, 1961 rejecting the benefits of Section 80JJAA of the Act. In other words, the order dated 17.01.2007 passed under 154 of the Income Tax Act, 1961 allowing the deduction claimed by the petitioner under Section 80HCC of the Act has been disallowed.

8. Meanwhile, a notice dated 06.02.2008 was issued under Section 148 of the Act. The petitioner replied to the same on 02.12.2008, which was culminated in an order dated 29.12.2008.

9. Aggrieved by the order dated 29.12.2008, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals). The petitioner's appeal was dismissed for non-prosecution vide order dated 03.06.2009.

10. Under these circumstances, the petitioner preferred an appeal before the Income Tax Appellate Tribunal in ITA No. 1337/MDS/094 for the Assessment Year 2004-05. Separate appeal was filed in ITA No 1338/MDS/2009 for the Assessment Year 2006-07.

11. The Tribunal by its common order dated 13.11.2009 set aside the order of the Commissioner of Income Tax (Appeal) dismissing the petitioner's appeal and remitted the case back to the Commissioner of Income Tax (Appeal) to pass a speaking order.

12. The Commissioner of Income Tax (Appeal) in the remand proceeding passed a fresh order on 28.10.2011 and partly allowed the aforesaid appeal. However, the said appeal did not deal with issues relating to the claim of the petitioner for deduction under Section 80JJAA of the Income Tax Act, 1961 as it was not subject matter of Appeal.

13. Against the order of the Commissioner of Income Tax (Appeal), the 2nd respondent preferred an appeal in ITA.No.19/Mds/2012 for the Assessment Year 2004-05 and in ITA No.1835/Mds/2012 for the Assessment Year 2003-04 before the Income Tax Appellate Tribunal 'B' Bench. By an order dated 12.05.2017, the Appellate Tribunal dismissed the respective appeals of the 2nd respondent.

14. As far as the Assessment Year 2005-06 is concerned, the petitioner filed a Revision Petition under Section 264 of the Income Act, 1961. It was rejected by an order dated 26.03.2008. The said order was impugned in W.P.No.3968 of 2009. The said W.P.No.3968 of 2009 was disposed on 03.12.2019. It was submitted that for the Assessment Year 2005-06 no further assessment has been passed.

15. Challenging the impugned order passed under Section 264 of the Income Tax Act, 1961 for the Assessment Year 2004-05, the present Writ petition has been filed. It is stated that the assessment order dated 29.12.2006 as modified by rectification order dated 17.01.2007 was reopened by the 2nd respondent vide re-assessment order dated 29.12.2008 for the Assessment Year 2004-05 under Section 147 of the Income Tax Act, 1961 and therefore there is no justification in not allowing the benefit of deduction under Section 80JJAA of the Income Tax Act, 1961.

16. It is submitted that against the order dated 12.05.2017 of the Income Tax Appellate Tribunal, the revenue had also preferred appeals in T.C.A.Nos.56 and 57 of 2018 which were recently dismissed as withdrawn on 07.06.2019.

17. It is further submitted that non-filing of audit report/certificate/form along with the return of income under Section 80JJAA(2) of the Income Tax Act, 1961 was not mandatory so as to deny the substantive benefit of exemption and the same could be even furnished subsequent to filing of the return of income.

18. The learned counsel for the petitioner has relied on the following decisions of the Court:-

i. Commissioner of Income Tax-1 vs. M/s.AKS Alloys P.Ltd., (2012) 18 taxman.com25 (Madras).

ii. Commissioner of Income Tax, Maharashtra vs. M/s.G.M.Knitting Industries P.Ltd., (2016) 71 Taxmann.com

35/(SC)

iii. Commissioner of Income Tax vs. Punjab Financial Corporation, (2002) 121 Taxmann 656 (Punjab & Haryana) (FB).

19. In the 1st mentioned case, the court held that non filing of form/certificate along with the return was not mandatory. It was further submitted that similar view was taken in the 2nd mentioned case.

20. As far as non-filing of the returns for the Assessment Year 2004-05 is concerned, the time-limit prescribed for revising the return under Section 139(1) in terms of Section 139(5) would not eclipse the powers vested with the 1st respondent under Section 264 of the Act to act fairly. In this connection, reference has been made to the decision of this Court in Sri. Selva Muthu Kumar Vs. Commissioner of Income Tax, [2017] 394 ITR 247 a Division Bench of this Court held as follows:-

13. The relief provided in terms of Section 139(5) is specific to the correction of a wrong statement or an omission in the original return by way of a revised return. The power under Section 264 of the Act extends to passing any order as the Principal Commissioner or Commissioner may think fit after making an inquiry and subject to the provisions of the Act, either suo-moto or on an application by the assessee. Though the remedies overlap, power under Section 264 is significantly wider and the wisdom of choosing one over the other would really depend on the facts and legal position of each case. The facts in the present case are to the effect that the petition under Section 264 was filed on 12.03.2009 once it became clear that the 144A directions issued in the case of SASTRA were in fact being accepted and applied by the Revenue in the re-assessments of the appellant dated 21.10.2008, 24.12.2008 and 14.12.2009 (AY 2003-04, 2004-05 and 2005-06), by which time, limitation under Section 139(5) for filing a revised return, being 31.3.2008, had lapsed. Suffice it to say that, on the facts of this case, the remedy under Section 264 is appropriate and ought to have been exercised in favour of the appellant by the Commissioner of Income tax. In view of the above discussion, the Writ Appeal stands allowed.

21. A further reliance was placed on the following decision of the Court :-

i. Chandrakant J Patel Vs. V.N.Srivastava,
(2011) 339 ITR 330.

ii. Parekh Bros. Vs. The Commissioner of Income
Tax, 150 ITR 105.

iii. The Commissioner of Income Tax Vs. Ramani
Realtors P Ltd., TCA.No.730 of 2014

iv. Rashtriya Vikas Limited Vs. The Commissioner
of Income Tax, (1992) 60 Taxman 74.

22. Defending the orders of the 1st respondent, the learned counsel for the respondent Mr.A.N.R.Jayapratap submits that the order is well reasoned and requires no interference. He submits that power under Section 264 of the Income Tax Act, 1961 cannot be exercised to condone the delay on the part of an assessee to comply with the mandatory requirements of the law. He submits that the writ petition is misconceived and is therefore liable to be dismissed.

23. I have considered the arguments advanced on behalf of the petitioner and the respondent.

24. By the impugned order, the respondent has rejected the application filed under Section 264 of the Income Tax Act, 1961. The 1st respondent has noted the Paragraph No.5 of the assessment order dated 29.12.2006 passed by the Assessing Officer, wherein it has been observed that since the petitioner had failed to file return before the expiry of one year from the end of the relevant assessment year, the benefit of deduction under Section 80 JJAA of the Income Tax Act, 1961 cannot be allowed.

25. The 1st respondent has observed that as per sub-Section 2 to Section 80JJAA of the Income Tax Act, 1961, deduction cannot be allowed unless the assessee furnishes certificate along with the return of income, the report of the accountant, as defined in the explanation below such sub-section (2) of Section 288 giving such particulars and the report as may be prescribed. Secondly, it is stated that the revised return was filed beyond the period of limitation prescribed under Section 139(5) of the Income Tax Act, 1961.

26. In this case, the assessment which was completed on 29.12.2006 for the Assessment Year 2004-05 reopened with issue of the notice under Section 148 of the Income Tax Act, 1961. Thus, the original assessment which was completed on 29.12.2006 as modified by an order dated 17.1.2007 and was put to jeopardy by the respondent. Once notice under Section 148 of the Income Tax Act, 1961 is invoked, the 2nd respondent has wide power to re-assess not only the income escaping keeping assessment but also grant reliefs that are due to an assessee. Such exercise would culminate in a fresh re-assessment order which no doubt has been eventually set aside by the Tribunal.

27. However, in the course of such a re-assessment proceedings, the assessment already made was put to jeopardy Under Explanation 3 to Section 147 of the Income Tax Act, 1961, an assessing officer can assess or re-assess the income in respect of any issue, which escaped assessment including such issue comes to his notice subsequently in the course of the proceeding, notwithstanding that the reason for such issue have not been included in the reasons recorded under Sub-section (2) of Section 148. Therefore, while assessing or re-assessing, the Assessing Officer has to also factor such benefits that were available to the petitioner.

28. The Assessing Officer is also duty-bound to extend substantive benefits which were available and arrive at just tax to be paid. Benefits which are otherwise available to an assessee cannot be denied on the ground of technical failure of an assessee is such assessee is legitimately entitled to such substantive benefit. In this connection, it may be apt to refer to the following quotation of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax Vs. Auriya Chambers of Commerce (1986) 3 SCC 50, wherein the Hon'ble Court held that procedures are handmaids of justice and not mistress of law. In Unichem Laboratories Vs. Commissioner of Central Excise, (2002) 7 SCC 145, the Hon'ble Supreme Court held that it is no part of duty of an officer of the revenue to demand tax which are not due to it merely to augment more revenue. They must act fairly and justly.

29. In this case, the 2nd respondent has not given to benefit while reassessing the income of the petitioner while passing order on 29.12.2008. It is precisely for dealing with situations like this, powers have been vested with superior officers like the respondent under Section 264 of the Income Tax Act, 1961.

30. Though, orders have to be passed subject to provisions of the Act, the intention of the legislative is not whittle down or deny benefit which are legitimately available to an assessee.

31. Failure to file return within the period under Section 139 of the Income Tax Act, 1961 for the purpose of claiming benefit of deduction under Section 80 AAJJ of the Income Tax Act, 1961, in my view is a more procedural formality. In my view, denial of substantive benefit cannot be justified since the assessment itself was reopened by the 2nd respondent and the assessment already made on 29.12.2006 was put to jeopardy.

32. If an assessee is entitled to benefit, technical failure on the part of an assessee to claim the benefit in time, should not come in the grant of substantial benefit/benefits that was/were otherwise available under the Income Tax Act, 1961 but for such technical failure.

33. I am therefore of the view that the petitioner would be entitled to the benefit of Section 80JJAA of the Income Tax Act, 1961. The 1st respondent ought to have allowed the application filed by the petitioner under Section 264 of the Income Tax Act, 1961.

34. In the light of the discussion, I am of the view that the petitioner is entitled to partial relief at this stage. Accordingly, the impugned order is set aside by condoning the delay in filing the return. The 2nd respondent is therefore directed to pass appropriate orders on merits in accordance with law, ignoring the delay on the part of the petitioner in filing the returns under Section 139(5) of accountant.

35. The 2nd respondent shall pass a speaking order within a period of three months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before order is passed.

36. Writ petition stands allowed with the above observation. No cost.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income Tax - II,
Race Course Road, Coimbatore.

2.The Assistant Commissioner of Income Tax,
Race Course Road, Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate,
Senior Standing Counsel income Tax, SR. No. 9388
+1cc to Mr.S.Sridhar, Advocate, S.R.No. 9213

W.P.No.3967 of 2009

SPD(CO)

RMP(17/07/2020)