IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

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

WRIT APPEAL NOS.915 & 917 OF 2020
&
CMP.NOS.11279, 11281, 11306 & 11307 OF 2020

M/s.T.Stanes and Company Ltd.,
rep.by its whole time Director
Mrs.Lakshmi Narayanan ...Appellant/Petitioner

Vs

The Deputy Commissioner of Income Tax, Corporate Circle I(2), Income Tax Department, Race Course Road, Coimbatore-641018. ...Respondent/Respondent

Prayer:-

APPEALS under Clause 15 of the Letters Patent against the common order dated 19.5.2020 made in W.P.Nos.30564 and 32477 of 2016.

W.P.No.32477 of 2016:-

To issue a Writ of certiorarified mandamus to call for the records of the respondent and quash the impugned notice for the assessment year 2011-12 under section 148 of the Act in PAN/GIR.AAACT7126P dated 21.09.2015 and the consequential order in PAN.No.AAACT7126P dated 26.08.2016 and direct the Respondent to drop the reassessment proceedings for the assessment year 2011- 12.

W.P.No.30564 of 2016:-

To issue a Writ of certiorarified mandamus to call for the records of the respondent and quash the impugned notice under section 148 of the Act in PAN/GIR.AAACT7126P, dated 08.09.2015 and the consequential order in PAN.No.AAACT17126P dated 20.07.2016 and direct the respondent to drop the reassessment proceedings for the assessment year 2010-11.

For Appellant : Mr.Vikram Vijayaraghavan for M/s.Subbaraya Aiyer Padmanabhan

For Respondent: Mr.A.N.R.Jayapratap, SC & Mr.A.P.Srinivas, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have elaborately heard Mr.Vikram Vijayaraghavan, learned counsel appearing on behalf of the appellant and Mr.A.N.R.Jayapratap, learned Standing Counsel and Mr.A.P.Srinivas, learned Senior Standing Counsel accepting notice for the respondent.

2. These appeals have been filed by the writ petitioner challenging the common order dated 19.5.2020 in W.P.Nos.30564 and 32477 of 2016.

3. The said writ petitions were filed by the appellant seeking to quash the notices issued under Section 148 of the Income Tax Act, 1961 (for short, the Act) and the consequential orders passed by the respondent and to direct the respondent to drop the re-assessment proceedings for the assessment years 2010-11 and 2011-12.

4. The appellant filed the said writ petitions contending that reopening of assessment was wholly unsustainable for the reason that it was a clear case of change of opinion since the issue pointed out in the notice dated 08.9.2015 was, in fact, discussed by the Assessing Officer while completing the scrutiny assessment vide order dated 25.3.2014. The appellant further contended that reopening of assessment was solely based on the decision of the Kerala High Court in the case of CIT Vs. Vijaya Retreaders [reported in (2001) 119 Taxmann 395], which cannot be applied to the facts of the case, as the issue in the said decision was as to whether the activity of retreading amounted to manufacture for the purpose of claiming deduction under Section 80I of the Act.

5. The requirement to be fulfilled for being entitled to deduction under Section 80I of the Act is that an industrial undertaking has to be engaged in the process of manufacture or should produce an article or thing and it was in the said words, the Kerala High Court in the decision in the case of Vijaya Retreaders held that retreading would not amount to manufacture or production.

6. It is further submitted that there are other decisions, which held that retreading amounted to processing and hence, would fall within the definitions of the words 'manufacture' and 'processing' as held by the Delhi High Court in the case of ACIT Vs. Kalsi Tyres [reported in (1981) 131 ITR 636].

7. The appellant also referred to the decision of the Hon'ble Supreme Court in the case of M/s.Aspinwall & Co. Ltd. Vs. CIT [reported in (2001) 251 ITR 323] wherein it was held that the process of curing of coffee was held to be a manufacture.

8. Similarly, in the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sesa Goa Ltd. [reported in 271 ITR 331], it was held that extraction and processing of granite was held to be a production activity within the meaning of Section 80I of the Act.

9. The appellant also relied upon the decision of the Hon'ble Supreme Court in the case of Chowgule & Co. (P) Ltd. Vs. Union of India [reported in (1981) 7 Taxman 71] wherein it was held that wherever a commodity underwent a change as a result of some operations performed on it or in regard to it, such operation would amount to processing of the commodity, that the nature and extent of change was not material and that what was necessary, in order to characterize an operation as processing, was that the commodity must, as a result of the operation, experience some change. It was further held that whatever be the means employed for the purpose of carrying out the operation, it was the effect of the operation on the commodity that was material for the purpose of determining whether the operation constituted processing.

10. We need not labour much on this issue, as the learned Single Judge had taken note of this fact and also held in favour of the appellant that this issue was discussed by the Assessing Officer in the scrutiny assessment, which culminated in the assessment order dated 25.3.2014 under Section 143(3) of the Act. For better appreciation, we quote the following paragraphs in the common impugned order :

> "15. The issue as to whether the petitioner was entitled to adjust the loss of the brought forward from the books of accounts of the transferor company was

subject matter of discussion before the assessment orders were passed for the respective Assessment Years .

16. Reopening of the assessment to deny the adjustments made under is therefore without jurisdiction. Therefore, the proviso to Section 147 of the Income Tax Act, 1961 puts an embargo on the respondent from proceeding further as 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 facts necessary for his assessment, for that assessment year."

11. The learned Single Judge, after having held that the reopening of assessment was wholly without jurisdiction, made an observation and rendered a finding in paragraph 17 of the impugned common order that in the course of the proceedings, the respondent – Assessing Officer could look into the other grounds. This observation/direction is not sustainable since the Writ Court had come to the conclusion that reopening of assessment was without jurisdiction. Therefore, to make any further observation or issuing any further direction after holding so cannot be sustained in the eye of law.

12. In this regard, it will be relevant to take note of the decision of the Delhi High Court in the case of Ranboxy Laboratories Vs. CIT [reported in (2011) 336 ITR 136] wherein it was held that the Assessing Officer had jurisdiction to reassess the income other than the income, in respect of which, proceedings under Section 147 of the Act were initiated, that however, he was not justified in doing so when the very same reasons for initiation of those proceedings ceased to survive and that the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 of the Act regarding assessment or reassessment of the escaped income, he would keep on making roving enquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which, he assumed jurisdiction.

13. The decision of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinaor of India Ltd. [reported in (2010) 2 SCC 723] was noted by the learned Single Judge.

14. Thus, having held that the reassessment proceedings were without jurisdiction, no further direction could have been issued by the learned Single Judge and more particularly the directions in paragraphs 17 to 20 of the impugned common order. For the above reasons, we are of the considered view that the appellant should succeed in these appeals.

15. Accordingly, the above writ appeals are allowed and while confirming the findings rendered by the learned Single Judge in paragraphs 15 and 16 of the impugned common order holding that reassessment proceedings were without jurisdiction, we set aside the directions/observations contained in paragraphs 17 to 20 of the impugned common order. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

The Deputy Commissioner of Income Tax,
Corporate Circle I(2),
Income Tax Department, Race Course Road,
Coimbatore-641018.

+1cc to Mr.A.P.Srinivas, SSC, S.R.No.33718
+1cc to M/s.Subbaraya Aiyer Padmanabhan, Advocate, S.R.No.33406

W.A.Nos.915 & 917 of 2020 &
CMP.Nos.11279, 11281, 11306
& 11307 of 2020

SRA(CO)
CS/01/12/2020