IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2020

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

TCA.No.560 of 2018

Shree Karthik Papers Ltd
No.25 Nagar,
Ramanatha, 50 Feet Road,
Krishnaswamypuram,
Coimbatore-641 045.
PAN:AADCS1863K .. Appellant

Versus

The Deputy Commissioner of Income Tax,
Central Circle-I,
63-A, Race Course Road,
Coimbatore. .. Respondent

PRAYER:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''C'' Bench, dated 28.07.2017 in I.T.A.No.325/Mds/2017. Against the order dated 25/11/2014 made in A.No.444/13-14 on the file of the Commissioner of Income Tax (Appeals)-1 Coimbatore for the assessment year 2006-2007.

Against the order dated 29/01/2014 made in PA.No./G.I.R.No.AADCS1863K on the file of the Assistant Commissioner of Income tax Company circle -1(1) Coimbatore for the assessment year 2006-2007.

For Appellant : Mr.R.Vijayaraghavan for Mr.Subbaraya Aiyar, Padmanabhan & Ramamani

For Respondent : Mr.T.R.Senthil Kumar Standing counsel for Direct Taxes

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN,J.,]

An Assessee is the appellant. The present appeal is filed under Section 260-A of the Income Tax Act, 1961, challenging the impugned order dated 28.07.2017, passed by the Income Tax Appellate Tribunal 'C' Bench (in short hereinafter referred to as 'ITAT').

2. The appellant / assessee filed the return of income for the assessment year 2006-2007 electronically dated 30.11.2006, declaring 'Nil' income after adjusting brought forward business loss of earlier years amounting to Rs.63,45,202/- and it was processed under Section 143 (1) of the Income Tax Act and subsequently, the assessee filed a revised return of income on 31.12.2009, admitting the 'Nil' income. A notice under Section 148 dated 27.01.2010 was issued to regularise the return of income and accordingly the assessee has filed the revised return of income on 28.01.2010. The Assessing Officer, vide order dated 17.05.2010 has assessed the total income as 'Nil'. Subsequently the Assistant Commissioner of Income Tax, Company Circle-I(1), Coimbatore has passed an order under Section 154 of the Income Tax Act dated 05-19/12/2013, revising the order of assessment dated 17.05.2010 and assessed the total income as 'Nil'.

3. The very same official, vide order dated 29.01.2014 had found that the income charged under Section 68(1) of the IT Act has been wrongly adjusted against the brought forward loss of earlier years and therefore, the income chargeable to tax has escaped assessment for the assessment year 2006-2007 and accordingly, issued the notice under Section 148 and in response to the same, the assessee, vide letter dated 17.04.2013, made a request to treat the return already filed on 28.10.2010, as response to the notice under Section 148 of the IT Act. The Assessing Officer having gone through the materials, had reassessed the income and accordingly passed the following order:
Tax working on the income offered under Section 68(1) of the I.T.Act:

Tax on Rs.88,55,000/- @ 30%	...	Rs.26,56,500/-
Add:Surcharge @ 10%	...	Rs. 2,65,650/-
		Rs.29,22,150/-
Add:Education Cess @ 2%	...	Rs. 58,443/-
Total Tax Payable	...	Rs.29,80,593/-
Less:T.D.S	...	Rs. 46,584/-
Balance Payable	...	Rs.29,34,009/-

Add:Interest u/s.234-B ... Rs.27,57,968/-
Interest u/s.234-C ... Rs. 1,48,167/-
... Rs.29,06,135/-
Balance PayableRs.58,40,144/-

This should be paid as per Demand Notice enclosed.

The following losses are allowed to be carried forward:

S.I.No.	A.Y	Business Loss	Depreciation on Loss	Set-off during the A.Y.(2006-07)	Balance	
					Business Loss	Depreciation
1.	1998-99		14,266,045	63,45,202		79,20,843
2.	1999-00		11,075,678			11,075,678
3.	2000-01	202,777,325	8,569,470		202,777,325	8,569,470
4	2001-02	16,427,337	6,683,121		16,427,337	6,683,121
5	2002-03	4,477,948	5,233,513		4,477,948	5,233,513
6	2003-04	24,840,476	4,202,947		24,840,476	4,202,947

4. The assessee, aggrieved by the said order, filed an appeal before the Commissioner of Income Tax (Appeals)-I [hereinafter referred as 'CIT (appeals']. The CIT Appeals, vide order dated 25.11.2014, in Appeal No.444/13-14, after taking note of the various decisions including the decisions rendered by a Division Bench of this Court in Commissioner of Income Tax Vs. Chensing Ventures (291 ITR 258) as well as a decision of the Gujarat High Court in the Commissioner of Income Tax Vs. Shilpa Dieing and Printing Mills (P.) Ltd (219 Taxman 279), had directed the Assessing Officer to allow set-off of carry forward depreciation loss in accordance with Sections 72 and 32 of the Income Tax Act, 1961. The Revenue aggrieved by the said order filed an appeal before the Income Tax Appellate Tribunal, 'C' Bench at Chennai, who vide impugned order dated 28.07.2017 held that there is no warrants in law for set off of unabsorbed depreciation or business loss against sums chargeable to tax as income under Section 68 in as much as the same do not fall to be categorized under any head of the Income Tax under Section 14 and having taken note of the course open to the Revenue where it considers the sum have been wrongly assessed by the Assessing Officer, only recourse is revision or rectification, had found that the assessment is liable for revision or rectification and accordingly allowed the appeal.

5. The assessee challenging the legality of the impugned order passed by the Income Tax Appellate Tribunal has filed this appeal and in the memorandum of grounds of appeal had raised the

following Substantial Questions of Law:

> 1.Whether the Tribunal was right in law in holding that the unabsorbed depreciation cannot be set off against sum chargeable to tax as income u/s.68 of the Act?
>
> 2. Whether the Tribunal was right in law in applying the new provision of section 115 BBE of the Act which barred set off of losses against income determined u/s.68 which was effective from 01.04.2017 and not in existence in the statute for the current assessment year 2006-07?

6. Mr.R.Vijayaraghavan, learned counsel appearing for the appellant / assessee has invited the attention of this Court to the Circular No.11/2018 dated 19.06.2019 issued by the Central Board of Direct Taxes, New Delhi as well as the decision rendered by a Division Bench of this Court, vide judgment dated 24.06.2019 in T.C.A.No.722 of 2018 (the Commissioner of Income Tax, Chennai. Vs. Shri.Hussain Mohideen Ibrahim Sha, Kodambakkam, Chennai 600 024) and would submit that in the light of the said circular, the Division Bench in the above cited decision had remanded the matter to the Income Tax Appellate Tribunal, as it requires reconsideration and in the light of the judgment reported in 2007 (291) ITR 0258 (Madras) cited supra, as well as the above cited circular, prays for similar relief.

7. Per contra, the learned Standing Counsel appearing for the respondent/Revenue has invited the attention of this Court to the contents of the impugned order and would submit that since the Tribunal being the final Court, had thoroughly gone into the factual aspects and legal issues and rightly reached the conclusion by remanding the matter for rectification and revision and there is no Substantial Question of Law arises for consideration in this appeal and prays for dismissal of this Appeal.

8. This Court has carefully considered the rival submissions and also perused the materials placed before it.

9. It is relevant to extract Paragraph no.4 of the decision reported in 2007 (291) ITR 258 (cited supra):

> 4.Heard the counsel. The AO has not given any reason whatsoever to deny the set off of the business loss against the income declared under the head '' other sources ''. Sec.71 deals with set off of loss against income under any other head. After setting off losses against the income under the same head, if the net result is still a loss, the assessee can set off

the said loss under Section 71 of the Act against income of the same year under any other head, except for losses which arise under the head ''capital gains''. The income tax is only one tax and levied on the sum total on the income classified and chargeable under the various heads. Sec.14 has classified different heads of income and income under each head is separately computed. Income which is computed in accordance with law is one income and it is not a collection of distinct tax levied separately on each head of income and it is not an aggregate of various taxes computed with reference to each of the different sources separately. There is only one assessment and the same is made after the total income has been ascertained. The assessee is subject to income-tax on his total income though his income under each head may be well below the taxable limit. Hence the loss sustained in any year under any head of income will have to be set off against income under any other head. In this case, the AO made addition of Rs.28,50,000/- as undisclosed income under Section 69 of the Act. Once the loss is determined, the same should be set off against the income determined under any other head of income. In the assessment, no reasons were given by the AO to deny the benefit of S.71 of the Act. The benefit provided under Section 71 of the Act cannot be denied and the learned standing counsel appearing for the Revenue is also unable to explain or give reasons why the assessee is not entitled to the benefit of Section 71 of the Act. The reasons given by the Tribunal are based on valid materials and evidence and the same are in accordance with the provisions of Section 71 of the Act. We find no error or legal infirmity in the impugned order.

10. The Central Board of Direct Taxes, New Delhi in the above cited circular bearing no.11/2019 dated 19.06.2019 had taken note of the legislative intent behind amendment in Section 115BBE(2), for the purpose of removing any ambiguity of interpretation, observed that vide Finance Act 2016 with effect from 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under Section 115BBE of the Act till the assessment year 2016-2017. In the case on hand, the assessment year pertains to 2006-2007 and therefore, this Court is of the considered view that in the light of the above cited judgment in 2007 (291) ITR 258 as well as the circular, the matter in issue requires further adjudication at the hands of the Income Tax Appellate Tribunal.

11. In the result, the Substantial Question of Law No.2 raised by the appellant is held in affirmative, as it requires further adjudication. As a consequence, there is no necessity to answer Substantial Question of Law No.1.

12. In the result, the Tax Case Appeal is partly allowed and the impugned order passed by the Income Tax Appellate Tribunal, ''C'' Bench, dated 28.07.2017 in I.T.A.No.325/Mds/2017 is set aside and the appeal is remanded to the Income Tax Appellate Tribunal, ''C'' Bench, for further adjudication and consideration as to the issues pointed out in the light of the judgment in 2007 (291) ITR 258 [Madras Division Bench] as well as Circular No.11/2018 dated 19.06.2019 issued by the Central Board of Direct Taxes, New Delhi. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Income Tax Appellate Tribunal
C Bench Chennai

2.The Deputy Commissioner of Income Tax,
Central Circle-I,
63-A, Race Course Road,
Coimbatore.

3.The Assistant Commissioner of Income Tax
Company Circle-1(1) Coimbatore

+1 cc to M/s.Subbaraya Padmanabhan sr23083
+1 cc to M/s.T.R.Senthil kumar advocate sr23077

TCA.No.560 of 2018

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