IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26996 of 2018
and
W.M.P.No.31382 of 2018

M/s.Seshasayee Paper and Boards Limited,
Rep by its Deputy Managing Director & Secretary,
Sri V.Pichai,
S/o.Late Sri M.R.Venkataraman,
aged about 70 years,
Cauvery R.S.Post,
Pallipalayam, Erode - 638 007, Tamil Nadu ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Circle 1, Namakkal,
Namakkal - Income Tax Office,
No.138/3 L.M.R.Shopping Arcade,
3rd Floor, Salem Road,
Namakkal, Tamil Nadu - 637 001. ... Respondent

Prayer: Writ Petition is filed under article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records in PAN AACCS1192G in Letter No.ITBA/AST/F/17/2018-19/1012282153(1) dated 17.09.2018 on the file of the Respondent relating to the A.Y.2011-12 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondent : Mr.A.P.Srinivas
Standing Counsel

O R D E R

The petitioner has challenged in this Writ Petition the impugned communication dated 17.09.2018 over ruling the objection of the petitioner dated 31.07.2018 and to reasons communicated on 18.07.2018. The petitioner was issued with a notice under Section 148 of the Income Tax Act on 27.03.2018 seeking to re-open the Assessment of A.Y.2011-12. In a communication dated 18.07.2018, the respondent has given the following reasons for re-opening the assessment which reads as under:-

> In your case, an Assessment for the AY 2011-12 has been reopened u/s 148 for the following reason.
>
> The assessee is engaged in the Business of manufacturing of paper and paper Boards. The assessee filed its Return of Income for "NIL" after claiming deduction u/s 80IA. The assessee has claimed exempted income of Rs. 2,03,565/- was disallowed by the assessee itself which was worked out at 2% of the dividend received by the assessee under the provisions of section 14A r.s.rule 8D. Since the computation of disallowance U/s.14A r.w.rule 8D has not done as per the provisions
>
> The assessee is hereby informed that, If there are any objections for the above reasons, the assessee may file the objection in writing on or before 31.07.2018.

2.In the impugned communication dated 17.09.2018 the respondent has stated that the claim for disallowance of 2% of the dividend of Income Tax under 14A read with Rule 8D of the Income Tax Act, 1961 needs to be understood that application under Section 14A read with Section 8D is mandatory and is not a matter of opinion of the Assessing Officer as no powers or discretion is vested with respect of the applicability of the said provisions of the Act.

3.However, it is noticed thus prior to Assessment, an audit objection was sent to the petitioner on 06.06.2013 which was replied on 19.06.2013. The petitioner had specifically replied as under:-

17.	(I)	Amount of deduction inadmissible in terms of Section 14A in respect of the expenditure incurred in relation to income which does not form part of the total income,	:	Rs.2 03 565 being the estimated expenditure @ 2% on Dividend Income as per ITAT order No.47/(MDS)/2002, dated June 17, 2005, for the Assessment year 1998-99.

4.It was considered and allowed by the Assessing Officer, while passing the assessment order. Therefore, to that extent re-opening for the assessment disallowing on expenditure under

Section 14A read with Rule 18A of the IT Rule 8D cannot be sustained.

5.However, with reference to deductions claimed under Section 80-IA, the respondent had stated that the petitioner had claimed deduction of Rs.1,26,78,801/- under Section 10(34) and the same needs to be verified. The aforesaid amount is not immediately traceable from the records filed by the petitioner. In the Income Tax returns the petitioner appears to have claimed a dividend of Rs.1,01,78,256/- only under the head of other income (dividend).

6.While passing the assessment order, the issue relating to 80-IA deductions was discussed by the Assessing Officer which was partly allowed and partly disallowed. On further appeal before the Commissioner of Income Tax (Appeals) in Appeal No.259/2013-2014, the Commissioner of Income Tax (Appeals) vide order dated 30.08.2017, has discussed the same in para 4. Relevant portion is reproduced below:-

> "4.Ground Nos.2.1 to 2.3: Disallowance U/s 80IA
>
> While making the disallowance u/s 80IA, the Assessing Officer in the assessment order contended that in respect of Captive Power Plant - CRB Undertaking, it is seen that the losses of the undertaking were set off against the income from paper business which is against the provisions of Section 80IA(5). The Assessing Officer further contended that the income of this undertaking is eligible for the claim of 80IA only when the losses of the undertaking are set off completely against the income of the undertaking. The Assessing Officer concluded that the assessee is ineligible for deduction u/s 80Ia since there is no profit from the undertaking during this year after setting off the brought forward losses.
>
> 4.1.The Authorized Representative submitted that the assessee is eligible for, deduction u/s 80IA of the Income Tax Act, 1961 following the decision of the Hon'ble High Court of Madras in the case of CIT Vs. Velayuthasamay Spinning Mills (P) Ltd reported in 21 Taxmann 95 (2012) and the latest decision of this Court in the case of M/s.Eastman Exports Global Clothing (P) Ltd reported in 54

> Taxmann 408 (2015). The appellant also relied on the CBDT Circular No.1/2016 dated 15.02.2016.
>
> 4.2.Respectfully following the Board's Circular and the recent Judgment of the Hon'ble Suprme court in the case of ACIT, Tirupur Vs. Velayudhaswamy Spg Mills P. Ltd delivered on 05.09.206 in SLP(c) No.33475/2012, this ground of appeal of the appellant is allowed.”

7.There is a confusion regarding the exact amount of deductions claimed by the petitioner. Therefore I am not inclined to interfere in the present Writ Petition in sofaras the proposal for disallowance of under Section 80-IA of the Income Tax Act is concerned. Therefore, the respondent is directed to keep in mind the proviso to Section 147 of the Income Tax Act while passing order.

8.In case, there was no case was made out for re-opening of the Assessment within a meaning of 1st proviso to Section 147 of the Income Tax Act, the respondent is obliged to not to proceed thereafter as no action can be taken under the said 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 issue under sub section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for assessment, for that assessment year.

9.The Writ Petition stands disposed with the above observation. The respondent is directed to pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jas

To

The Assistant Commissioner of Income Tax,
Circle 1, Namakkal,
Namakkal - Income Tax Office,
No.138/3 L.M.R.Shopping Arcade,
3rd Floor, Salem Road,
Namakkal, Tamil Nadu - 637 001.

+1 cc to Mr.A.P.Srinivas Advocate sr14015
+1 cc to Mr.G.Baskar Advocate sr13918

W.P.No.26996 of 2018
and
W.M.P.No.31382 of 2018

ca(co)
aa12/05/2020