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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

TCA.No.1018 of 2009

The Commissioner of Income Tax
Coimbatore.

.. Appellant

Versus

M/s. Precot Meridian Limited
No.737, Green Fields Puliakulam Road
Coimbatore 641 045.

.. Respondent

Tax Case Appeal filed against the order of Income Tax Appellate Tribunal, Madras "A" Bench, Chennai, dated 27.02.2009 passed in I.T.A.No.749/Mds/2007 against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 05/01/2007 passed in Appeal No.132/06-07 against the order of the Assistant Commissioner of Income Tax, Company Circle-1(1), Coimbatore dated 27/03/2006 made in PAN/GIR No.AABCP3038K Co.CirI(1)/CBE for the Assessment year 1999-2000.

For Appellant : Mr. M. Swaminathan
Senior Counsel
assisted by
Mrs.K.G.Usharani
Junior Standing counsel

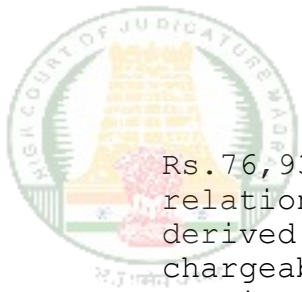
For Respondent : Mr. S. Sridhar

JUDGMENT

(Judgement was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the records.

2.The respondent / assessee is engaged in the business of manufacturing and sale of cotton and blended yarn. They filed the return of income for the assessment year 1999-2000 on 29.12.1999, declaring a total loss of Rs.7,44,57,879/- and book profit for the purpose of section 115JA of the Income Tax Act, was computed to the tune of Rs.1,33,70,320/-. The regular assessment was completed under section 143(3) of the Act on 26.03.2002 determining the total loss at Rs.1,81,91,075/-. The Assessing Officer subsequently, noted that an amount of



Rs.76,93,861/- claimed under section 10B of the Act in relation to Unit 'C' do not constitute 'profits and gains derived from the industrial undertaking' and hence, income chargeable to tax has escaped from escapement within the meaning of Section 147 of the Act r/w section Explanation 2 thereof. The break up of the receipts disallowed by the Assessing Officer are as follows:

(i) Lease rental receipts	-	Rs.69,66,729/-
(ii) Sale of import licences	-	Rs. 3,64,679/-
(iii) Miscellaneous income	-	Rs. 3,62,454/-
Total	-	Rs.76,93,861/-

Thereafter, the Assessing Officer proceeded to issue notice under section 148 on 02.02.2006, to which, the assessee filed its objections. However, the Assessing Officer considered the said three receipts as ineligible for exemption under section 10B. Challenging the same, the assessee filed appeal, which was dismissed by the First Appellate Authority, by order dated 05.01.2007. Aggrieved over the same, the assessee went on further appeal before the Income Tax Appellate Tribunal.

3. By order dated 27.02.2009, the Tribunal allowed the appeal filed by the assessee, on the ground of procedural lapses. The relevant observations of the Tribunal are quoted below for ready reference:

"5. We are of the view that in order to invoke section 147 of the Act, after the expiry of four years from the end of the assessment year, the Assessing Officer has to make sure that the assessee has failed to disclose fully and truly all material facts necessary for the assessment. It can be seen that the assessee has disclosed the entire facts in the balance sheet and Profit and Loss Account filed along with the return. It is pertinent to say that the Assessing officer himself initiated proceedings under section 147 of the Act by following the same profit and Loss Account and balance sheet filed along with the return. Hence, in these circumstances, one cannot say that the assessee has concealed any material facts from the knowledge of the Assessing officer. Explanation 2 to section 147 envisages different circumstances where income chargeable to tax can be treated as escaped income, only in such cases where reassessment proceedings started within four years from the end of the relevant assessment year. In other words, we are of the considered opinion that if the reassessment proceeding is initiated after the expiry of four years, it must be supported by sufficient reasons...

6. In short, the assessee has furnished all materials necessary for claiming relief under



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section 10B along with the return itself. In these circumstances, one cannot say that the reassessment proceeding initiated under section 147 of the Act after four years from the end of the relevant assessment year is in accordance with law. Hence, we allow the appeal filed by the assessee. As the appeal is allowed on procedural lapses by the AO, we are not entering into the merits of the case."

The aforesaid order of the Tribunal is impugned in this appeal at the instance of the Revenue.

4. By order dated 02.11.2009, the above appeal has been admitted on the following substantial questions of law:-

"1. Whether in the facts and in the circumstances of the case, the Tribunal was right in holding that reopening of assessment after the expiry of 4 years from the end of relevant assessment year was not valid?

2. Whether the disallowance made on account of lease rentals, miscellaneous income and sale of import license aggregating to Rs.76,93,961/- forms part of Incomes of the assessee for claiming deduction under Section 10-B of the Income Tax Act?"

5. As regards the first substantial question of law, it is seen that the notice under section 148 of the Income Tax Act, 1961, was issued on 02.02.2006, which is beyond the period of four years from the end of the relevant assessment year. Further, there was no failure on the part of the assessee in disclosing all the materials facts necessary for the assessment. In such circumstances, this court is of the opinion that the Tribunal was justified in annulling the re-assessment order of the year 1999-2000 on the ground of same being barred by limitation as per proviso to section 147. The position of law in this regard has already been decided in favour of the assessee and against the revenue in T.C.A. No. 317 of 2020 dated 16.09.2020 in the case of Commissioner of Income Tax, Corporate Ward 3(4), Chennai vs B. Suresh Kumar [(2020) 120 taxmann.com 404 (Madras)], wherein it was held as follows:

"8. Therefore, in our considered view, the Tribunal was fully justified in holding that reopening the assessment beyond four years was a clear change of opinion and did not satisfy the requirements to be fulfilled in terms of 1st proviso to section 147 of the Act. Thus, the Revenue has not made out any ground to interfere with the order passed by the Tribunal."



In the light of the above, this court does not find any ground to interfere with the order of the Tribunal and this substantial question of law is answered in favour of the assessee and against the Revenue.

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6. Consequently, the second substantial question of law is also answered in favour of the assessee and against the Revenue.

7. Accordingly, the Tax Case Appeal filed by the Revenue is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

dhk/msr

To

1. The Income Tax Appellate Tribunal
Madras 'A' Bench, Chennai

2. The Commissioner of Income Tax (Appeals)-I
Coimbatore.

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

4. The Commissioner of Income Tax,
Coimbatore.

+1cc to Mr.M.Swaminathan, Advocate SR. No. 64556

+1cc to Mr.S.Sridhar, Advocate SR. No.64131

TCA No. 1018 of 2009

GSM (CO)

PR (12/01/2022)