IN THE HIGH COURT OF JUDICATURE AT Chennai

DATED: 19.03.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal Nos. 562 & 563 of 2010

The Kallakuruchi Agricultural Producer
Co-operative Marketing Society Ltd.,
5, Nephal Street,
Kallakurichi - 606 202 ... Appellant in both TCAs

vs.

The Assistant Commissioner of Income Tax,
Circle II,
S.N. Chavadi,
Cuddalore - 607 202. ... Respondent in both TCAs

Tax Case Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, Chennai, ''B'' Bench, dated 30.10.2009 passed in I.T.A.Nos.708 & 709/Mds/2009 for the Assessment Years 2001-02 and 2004-05 made against the orders of Commissioner of Income Tax, Pondicherry both dated 09.03.2009 in C.No.91274 (5) CIT/PDY/2008-09, for Assessment year 2001-02 and 2004-05, against the order of Assistant Commissioner of Income Tax Circle-II, Cuddalore in PAN/GIR No.AAAAK1847N 21603-K dated 22.12.2006, for the Assessment year 2001-02 and 2004-05.

For Appellant : Mr.V.S. Jayakumar
For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

JUDGMENT

(Judgment was Delivered by M. DURAISWAMY, J)

Challenging the common order dated 30.10.2009 passed in I.T.A.Nos.708 & 709/Mds/2009 in respect of the Assessment

Years 2001-02 and 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai, ''B'' Bench (for brevity, the Tribunal), the assessee has filed the above appeals.

2. The above appeals were admitted on the following substantial questions of law:

> " (i) Whether the Tribunal was right in holding that \ the Commissioner of Income Tax had correctly invoked Section 263 of the Income tax Act without giving any finding that the said order did not fulfil the conditions laid down in the eh said section?
>
> (ii) Whether the Tribunal was right in law in holding that the provisions of Section .14 A are applicable to cases covered under chapter VI A as according to the Tribunal the issue of deduction under section 80 P is totally independent from the issue of disallowance of expenditure under section 14 A of the Income Tax Act? "

3. The Income Tax Appellate Tribunal while dismissing the appeals filed by the assessee observed that the Commissioner of Income Tax has made an observation regarding disallowance of the expenses relating to non-members, the same is only an independent and passing remark of the Commissioner of Income Tax having no bearing on the conclusion arrived by the Commissioner of Income Tax with respect to the issue involved in the show cause notice. Further, the Tribunal observed that there is no merit or substance in the contention of the assessee when the issue of disallowance of expenditure under section 14A has already been settled by the Tribunal for the assessment year 2002-03 and in such case, the Commissioner of Income Tax cannot pass a revision order under section 263 on the same issue. Further, the Tribunal held that the issue of deduction under section 80P is totally independent from the issue of disallowance of expenditure under section 14A and the Assessing Officer has neither made any enquiry nor applied his mind on the issue of 80P. Observing so, the Tribunal found no error in the order passed by the Commissioner of Income Tax under section 263 of the Income Tax Act.

4. Mr.V.S. Jayakumar, learned counsel appearing for the appellant submitted that the Tribunal had already decided the issue with regard to Section 14 A in respect of the appellant-assessee pertaining to the assessment year 2002-03 in their favour and therefore, the authorities cannot take a contrary stand in respect of the other assessment years, which are impugned in the above appeals.

5. Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the respondent submitted that since the Tribunal had already decided, the issue with regard to Section 14 A in favour of the assessee in respect of the assessment year 2002-03 in I.T.A. No.2198/Mds/2005, the Assessing Officer may be directed to give effect to the impugned orders passed by the Tribunal taking into consideration the earlier order passed by the Tribunal for the Assessment Year 2002-03, dated 31.01.2008 and decide the matter in accordance with law.

6. Mr.V.S. Jayakumar, learned counsel appearing for the appellant submitted that the Assessing Officer may be directed to complete the exercise by giving effect to the impugned order passed by the Tribunal after taking into consideration the earlier order passed by the Tribunal in respect of the Assessment Year 2002-03.

7. Having regard to the submissions made by the learned counsel on either side, since the Tribunal had already decided the issue with regard to Section 14 A in favour of the assessee in respect of the assessment year 2002-03 in I.T.A. No.2198/Mds/2005, we direct the Assessing Officer to give effect to the impugned orders passed by the Tribunal taking into consideration the earlier order passed by the Tribunal for the Assessment Year 2002-03, dated 31.01.2008 and decide the matter in accordance with law. So far as the first question of law is concerned, we are leaving it open and the same would be decided in an appropriate case.

With these observations, both the Tax Case Appeals are disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RJ
To

1. The Income Tax Appellate Tribunal,
   Chennai ''B''Bench, Chennai.
2. The Assistant Commissioner of Income Tax,
   Circle II, S.N. Chavadi,
   Cuddalore - 607 202.
3. The Commissioner of Income Tax, Pondicherry.

+1cc to Mr.V.S.Jayakumar, Advocate, S.R.No.17818

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AK-II(CO)
TE (30/04/2021)