IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.03.2021

CORAM:

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

T.C.A.Nos.294 to 298 of 2013

The Commissioner of Income Tax,
Madurai. ... Appellant in all 5 TCAs

Vs.

M/s.Sri Ramalinga Mills Limited,
Ramasamy Nagar,
Aruppukottai – 626 159. ... Respondent in all 5 TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 13.09.2012 in I.T.A.Nos.1390 to 1394/Mds/2012 for the assessment year 1999-2000, 2001-02, 2002-03, 2003-04 & 2004-05 against the order of Commissioner of Income Tax (Appeals)II I/c Madurai in ITA Nos.488/2006-07, 337/2008-09, 486 & 03/10-11, 347/09-10 and 487/06-07 dated 12.03.12, 12.03.12, 12.03.12, 12.03.12 and 12.03.12 for the Assessment year 1999-2000, 2001-02, 2002-03, 2003-04 and 2004-05 respectively (TCA Nos.294/13 to 298/13)

` as against the Joint Commissioner of Income Tax, Virudhunagar in PAN/GIR No.AADCS8769A, DATED 21.12.2006, 27.12.2006 and 27.12.2006 for the Assessment year 1999-2000, 2002-03 and 2004-05 (TCA No.294/13, TCA No.296 and 298/13)

Assistant Commissioner of Income Tax, Circle-I, Virudhunagar in PAN/GIR No.AADCS8769A dated 26.12.2008 Assessment year 2001-02 (TCA No.295/13)

Assistant Commissioner of Wealth-Tax, Circle-I, Virudhunagar in PAN/GIR No.AADCS8769A dated 31.12.2009 for the Assessment year 2003-04 (TCA No.297/13)

For Appellant (in all 5 TCAs) : Mr.M.Swaminathan, Senior Standing Counsel assisted by Ms.V.Pushpa, Standing Counsel

For Respondent (in all 5 TCAs) : No appearance

COMMON JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the orders passed in I.T.A.Nos.1390 to 1394/Mds/2012 for the assessment years 1999-2000, 2001-02, 2002-03, 2003-04 & 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai, "D" Bench, the Revenue has filed the above appeal.

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

> "Whether on facts and circumstances of the case, the Tribunal was right in law that the amendment to the third proviso to Section 80HHC with retrospective effect from 01.04.1998 is violative of Constitution of India when the assessee has not fulfilled the conditions of proviso of Section 80HHC(3)?"

3.When the appeals are taken up for hearing, Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant - Revenue fairly submitted that the question of law that has been raised in the above appeals are covered by the decision of the Hon'ble Supreme Court reported in [2015] 58 taxmann.com 100 (SC) [Commissioner of Income Tax Vs. Avani Exports] wherein the Apex Court held as follows:

> "1.Amendment to Section 80HHC(3) of the Income Tax Act, 1961 (in short 'the Act') was made by the Taxation Laws (Second Amendment) Act, 2005 with retrospective effect i.e. with effect from Ist April, 1992. By this amendment certain benefits were in fact extended to the exporters who are entitled to claim according to Sec.80HHC of the Act. However at the same time, the amendment also carved out two categories of exporters, namely, those whose export is less than Rs. 10 crores per year and those exporters whose exports turn over is more than Rs.10 crores per annum. Insofar as entitlement of these benefits to the exporter having turn over of more than Rs.10 crores p.a. is concerned, two conditions contained in third and fourth proviso to the said amendment were to be satisfied for claiming the benefits. Those were:

a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being Duty

Remission Scheme.

2. All the respondents in these SLPs, who are the exporters, belong to the second category. They filed the writ petitions challenging conditions mentioned in third and fourth proviso to Section 80 HHC(3). In fact it was their precise contention that these conditions are severable and therefore these two conditions should be declared ultra vires and severed. The rationale behind seeking such a prayer was obvious inasmuch as the writ petitioners did not want entire Notification to be declared ultra vires which was to their advantage. What they wanted was that the benefit of amended provision be accorded, without insisting on the aforesaid conditions.

3. The High Court vide impugned judgment has decided the issue in favour of the writ petitioners by concluding as under:

> "26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessees whose assessments were still pending although such benefit will be available to the assessees whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a fewer section of the assessees.
>
> 27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessees whose export turnover is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessees."

4. Against the High Court judgment these SLPs are filed by the Union of India. Mr. Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to severe the aforesaid two conditions as onerous and ultra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the Section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs. 10 crores and other like the respondents with turn over of more than Rs.10 crores would be at par and both would be entitled to the benefits.

5. We find that in essence the High Court has quashed the severable part of third and fourth proviso to Sec.80HHC (3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:

"Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 cr. Should be treated similarly. This order is in substitution of the judgment in Appeal."

6. With the aforesaid clarification all these SLPs including that of assessees filed against the judgment of M.P. High Court are disposed of.”

4.In view of the submissions made by the learned senior standing counsel for the appellant - Revenue, following the ratio laid down by the Hon'ble Supreme Court in the judgment reported in [2015] 58 taxmann.com 100 (SC) [Commissioner of Income Tax Vs. Avani Exports], cited supra, the question of law that has been raised in the above appeals is decided against the Revenue. Accordingly, the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

VA

To

1. The Income Tax Appellate Tribunal,
   Chennai, "D" Bench.

2. The Commissioner of Income Tax, Chennai.

3. The Joint Commissioner of Income Tax,
   Virudhunagar Range, Virudhunagar.

4. The Commissioner of Income Tax (Appeals)-II,
   Madurai.

5. The Assistant Commissioner of Income Tax,
   Circle-I, Virudhunagar.

6. The Assistant Commissioner of Wealth-Tax,
   Circle-I, Virudhunagar.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.21063

T.C.A.Nos.294 to 298 of 2013

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