IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

T.C.A.No.664 of 2019

Principal Commissioner of Income Tax,
Central 1,
108, Nungambakkam, High Road,
Chennai-600 034. .. Appellant/Appellant

-vs-

Shri K.T.Kunjumon,
Buddha Street, Ashok Nagar,
Directors Colony, Chennai-600 024.
PAN No.ACZPK 1724A .. Respondent/Respondent

Prayer : Appeal under Section 260A of the Income Tax Ac, 1961 against the order dated 12.02.2019 made in I.T.(SS) A.No.06/CHNY/2018 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai for the assessment block period 01.04.1986 to 31.03.1996 and 01.04.1996 to 30.01.1997.

Preferred against the order dated 31.01.2018 made in I.T.A.No.31/16-17 on the file of the Commissioner of Income Tax, (Appeals)-18 46, Mahatma Gandhi Road, Nungambakkam and against the order dated 31.03.2016 on the file of the The Deputy Commissioner of Income Tax, Central Circle 1(4) No.46, mahatma Gandhi Salai, Nungambakkam, Chennai-34, PAN No.ACZPK1724A, Assessment Year-Assessment Year related to block 01.04.1986 to 31.03.1996 to 30.01.1997.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
assisted by Ms.K.G.Usha Rani,
Junior Standing Counsel

For Respondent : Ms.Vandhana,
for Mr.R.Sivaraman

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JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 12.02.2019, made in I.T.(SS) A.No.06/CHNY/2018 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai (for brevity "the Tribunal") for the assessment block period 01.04.1986 to 31.03.1996 and 01.04.1996 to 30.01.1997.

2.The appeal has been filed raising the following substantial questions of law:-

> "(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in allowing the claim of deduction u/s 80IA without appreciating that the conditions laid down in Section 80IA have not been satisfied by the assessee? and
>
> (2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in not appreciating that the relied upon decision and the assessee's case are distinguishable on facts?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usha Rani, learned Junior Standing Counsel for the appellant/Revenue and Ms.Vandhana, learned counsel for Mr.R.Sivaraman, learned counsel for the respondent/assessee.

4.The short issue, which falls for consideration, is whether the Tribunal was right in allowing the claim of deduction under Section 80IA of the Act.

5.The argument of Mr.T.R.Senthil Kumar, learned Senior Standing Counsel is that the assessee miserably failed to fulfil the conditions stipulated under sub-Section (7) of Section 80IA of the Act.

6.The case has had a chequered history pursuant to a search, which was conducted during 1997. The assessee had gone before the Income Tax Settlement Commission, Chennai (for brevity "the Settlement Commission") and an order dated 22.07.1999, was passed under Section 245D(1) of the Act in which, the Settlement Commission brought out the facts and observed that the documents reveal that two business concerns, viz., ARS International and ARS Film International with Mr.A.Pavithran and Mr.Francis Joseph were in fact, actually controlled by the respondent/assessee and they were his benamidars. Further, the Settlement Commission observed that the computation of undisclosed income thereon involved a very complex exercise of working out not only the undisclosed income of the assessee, but also suppressed income of the related benamidars and also matching the available sources with the unaccounted investments made by the assessee.

7.Furthermore, in the case of the said benamidar, Mr.Francis Joseph, assessment proceedings were initiated and ultimately, the matter came up to this Court in T.C.A.No.1318 of 2005 at the instance of the Revenue. The tax case appeal was filed raising identical substantial questions of law, as raised before us in this appeal by the Revenue. The Division Bench, by judgment dated 22.06.2012, disposed of the appeal and restored the matter back to the files of the Assessing Officer for the assessee to produce necessary material to satisfy the conditions under sub-Clause (ii) of sub-Section (2) of Section 80IA of the Act. In paragraph 12 of the judgment, the Court had recorded that if the assessee (Francis Joseph) is able to prove that it is not a form by the transfer to a new business of machinery or plant previously used for any purpose, then the assessee would qualify for deduction, since he had qualified on the other condition, viz., manufacture of an article or thing.

8.As noted above, the said Francis Joseph has been held to be a benamidar. In fact, the assessee had accepted the factual position and the matter proceeded from the said stage.

9.The Revenue challenged the order passed by the Commissioner of Income Tax (Appeals)-18, Chennai (for brevity "the CIT(A)") dated 31.01.2018, which held that the assessee was entitled to claim deduction under Section 80IA of the Act. The Revenue, being aggrieved by such order, filed appeal before the Tribunal raising only two grounds stating that the assessee was using already existing machinery and cannot be stated to be a new industrial undertaking, which came into existence during the relevant previous year. Further, the assessee was only doing a new project in the same line of business by producing cinemas and every new project in the nature of new cinema cannot be termed as a "new industrial undertaking". The correctness of the said contention was examined by the Tribunal, after taking note of the decision of the High Court of Bombay in the case of CIT vs. Jyoti Prakash Dutta [(2014) 367 ITR 568 (Bom.)] wherein, it was held if the assessee has satisfied the condition stipulated in sub-Section (2) of Section 80IA, it would be eligible for the deduction claimed by it. In the said case also, the assessee was engaged in the activity of film production. Thus, after taking note of the said decision and also noting that the Revenue was not able to show that there was any transfer of used machinery or plant to a new business and that the production of cinema film would amount to manufacturing or processing of goods as qualified by the Central Board of Direct Taxes circular dated 23.07.1999, decided the case in favour of the assessee.

10.The point, now canvassed before us by the Revenue stating that the condition stipulated in sub-Section (7) of Section 80IA of the Act has not been fulfilled by the assessee, is a point, which was never taken by the Revenue at any earlier point of time. That apart, the benamidar of the assessee, viz., Francis Joseph had availed the benefit of the KVSS Scheme by filing a declaration and certificate was also issued. Subsequently, the assessee addressed the Department on 27.09.1999, stating the factual position. This has led to the issuance of a notice/order dated 01.11.1999 by the Commissioner of Income Tax (Central), Chennai stating that Mr.Francis Joseph has obtained the certificate under Section 90(2) of the Finance (No.2) Act, 1998 by making a false declaration. In the said notice/order, it was also mentioned that Mr.Francis Joseph, by letter dated 21.10.1999, has expressed his consent for the adjustment of tax of Rs.8,69,338/- paid by him under KVSS Scheme towards the tax payable by the assessee before us under the KVSS in view of the inclusion of Francis Joseph's income for the relevant year 1994-95 in the hands of the assessee before us. All the above facts will clearly show that there is no error in the order passed by the Tribunal.

11.Accordingly, the appeal stands dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-
Assistant Registrar(IV)

//True copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal 'B' Bench, Chennai.

2. The Principal Commissioner of Income Tax, Central I, Chennai.

3. The Commissioner of Income Tax. (Appeals)-18, Chennai.

4. The Deputy Commissioner of Income Tax, Central Circle 1(4), Chennai.

+1cc to Mr.T.R.Senthil Kumar, Senior Standing Counsel, Advocate SR.No.11079

T.C.A.No.664 of 2019

MGR(CO)
GMY(15/04/2021)