IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case Appeal No. 1108 of 2009
and
Tax Case Appeal No. 284 of 2010

TCA No. 1108 of 2009

M/s.Pentafour Products Limited
332/2, Arcot Road,
Kodambakkam
Chennai - 600 024 .. Appellant

Versus

The Deputy Commissioner of Income Tax
Central Circle III (4)
Chennai - 600 034 .. Respondent

TCA No. 284 of 2010

Commissioner of Income Tax III
Chennai .. Appellant

Versus

M/s.Pentafour Products Limited,
'Chitra Towers'
333/2, Arcot Road,
Kodambakkam, Chennai 600 024 .. Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order dated 05.06.2009 passed by the Income Tax Appellate Tribunal, Chennai “B” Bench, in I.T(SS). A.No.70/Mds/2004. Against the order of the Commissioner of Income Tax Appeals Central II, Chennai 34, dated 20.06.2003 in ITA.No.147 / 2002-03 for the Assessment Years 1989-1990 to 1999-2000. Against the Assessment Order of the Income Tax Department dated 30.05.2001 PANo/GINo AADPB1269K/34102P for the Assessment Years 1989-1990 to 1999-2000.

TCA No. 1108 of 2009

For Appellant : Mr. A.S. Sriraman
For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

TCA No. 284 of 2010

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel
For Respondent : Mr. A.S. Sriraman

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

These tax case appeals have been filed by the Assessee as well as Revenue, calling in question the correctness of the order dated 05.06.2009 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in I.T(SS).A.No.70/Mds/2004, relating to the assessment years 1989 -1990 to 1999-2000.

2. By order dated 03.11.2009, this Court admitted Tax Case Appeal No. 1108 of 2009 on the following substantial questions of law:-

"1. Whether the Appellate Tribunal is correct in law in dismissing the ground of appeal challenging the addition of disclosed income relating to the 'depreciation claim' based on the revised financial statements filed in the block assessment proceedings overlooking the 'real income' theory?

2. Whether the appellate Tribunal is correct in law in dismissing the appeal relating to the assessment of undisclosed income referable to the differential quantum on the depreciation claim in comparison with the regular returns filed for the assessment years comprised in the block period under consideration even though the cumulative effect of the reworking nullified the attempt of the respondent?

3. Whether the appellate Tribunal is correct in law in dismissing the appeal challenging the assessment of differential quantum on the depreciation claim overlooking the admitted position of non-availability of seized materials indicating false claim of depreciation in the regular returns filed comprised in the block period under consideration within the scope of Section 158 B (b) of the Act."

3. On 06.07.2010, T.C.A. No. 284 of 2010 was admitted on the following substantial question of law:

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the various additions made in the Block Assessment made under Section 158BC of the Income Tax Act on the ground that such additions related to regular assessments, without appreciating the amendments made by the Finance Act, 2002 with retrospective effect from 01.07.1995 to Section 158 (b), 158BB(1) and the Explanation (a) to Section 158BB (1)?

4. For the sake of convenience, the parties to these appeals shall be referred to as "assessee" and "revenue" in these appeals.

5. The assessee is a limited company engaged in the business of manufacture of electrical, electronic and automobile related products. During the course of their business, a search and seizure operation under Sec. 132 of the Income Tax Act, 1961 (in short, the Act) was conducted on 11.01.1999 during which books of accounts and other documents were seized. The books and accounts so seized unfolded that the assessee never disclosed the income arising out of (i) depreciation on non existing assets and (ii) expenses debited to profit and loss account but not paid the taxes before the due date. The assesssing officer, based on such books of accounts, finalised the block assessment proceedings for the assessment years 1989-1990 to 1999-2000 and passed an order of assessment dated 30.05.2001 against the assessee determining the undisclosed income at Rs. 33,75,28,601/- by making additions on various heads.

6. Aggrieved against the assessment order dated 30.05.2001, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) in IT Appeal No. 147/2002-2003. Before the Appellate authority, it was the contention of the assessee that the additions made by the assessing officer formed part of regular assessments and they did not come within the fold of 'undisclosed income' under the provisions of Section 158 B(b) of the Act. It was also contended that the assessee has filed the statement of affairs along with the block returns in respect of the assessment years falling within the block period, while so, the additions made by the Assessing Officer are unwarranted. It was also submitted that the Assessing Officer erred in taking only the debits for making additions and not considering the correct income/ credit, which does not result in determination of undisclosed income in real term as

contemplated under Section 158B of the Act.

7. The appellate authority, by order dated 20.06.2003 rejected the submissions so made by the assessee by holding that the additions were made on the basis of the documents recovered during the search, which clearly shows that the assessee failed to disclose the income truly and precisely by filing returns after the search and that the income earned by the assessee remained undisclosed until the date of search. However, the Appellate Authority has re-determined the total undisclosed income at Rs.33,40,82,480/- as against the sum of Rs.33,75,28,601/- assessed by the Assessing Officer and partly allowed the appeal.

8. As against the order dated 20.06.2003 of the Appellate Authority, the assessee filed a further appeal before the Tribunal in I.T. (SS) A. No.70/Mds/ 2004. The Tribunal held that the assessee falsely claimed expenses, deduction or allowance claimed under this Act which would also come within the definition of undisclosed income as per the amendment to the Finance Act, 2002, with effect from 01.07.1995. As the assessee has claimed depreciation on non-existing assets, the same is a false expenditure which could not be ordinarily detected in the course of regular assessment proceedings. Further, the assessee had debited various expenditures in the profit and loss account, but those expenses were not paid within the due date for filing the return. However, the Tribunal noted that the expenditures which were debited to the profit and loss account already, but the same were not paid till the due date of return under Section 139 of the Act, therefore, the same cannot be treated as false. The expenditures have already become due and were recorded in the books, as such, the expenditure, which became due and were recorded in the books of account, cannot be treated as undisclosed income of the assessee under the block assessment. Accordingly, the Tribunal confirmed the additions made by the Assessing Officer as well as the Appellate Authority on account of excess claim of depreciation of non-existing assets, but all the other additions made were deleted as they cannot be treated as undisclosed income under the block assessment.

9. Aggrieved by the order of the Tribunal, the present appeals are filed by the Assessee as well as Revenue.

10. During the course of hearing, the learned counsel for the assessee submitted that by the Finance Act, 2002, amendments have been made to Section 158BB of the Act with effect from 01.07.1995. As per the amendment, the undisclosed income for block period shall be the aggregate of the total income of the previous years falling within the block period "in accordance with the provisions of this Act, on the basis of evidence found

as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence". However, the applicability of the amendments brought to the Finance Act, 2002 with effect from 01.07.1995 to the case of the assessee has not been considered by the Tribunal while passing the impugned order dated 05.06.2009. It is further submitted that the Finance Act, 2002 has made a clarificatory amendment to include a reference to Sec. 145 so as to make the provisions of that section applicable in the block assessment. However, the Tribunal, while rejecting the claim of the additions made by the assessing officer, has failed to reckon with the amendment made by the Finance Act, 2002 to the provisions of Section 158B(D) with retrospective effect from 01.07.1995 to redefine the term 'undisclosed income' to include any expenses, deduction or allowance claimed under the Act. Since the amendment is of the year 2002, they have not been taken into consideration and it needs examination. Therefore, it is prayed by the learned counsel for the assessee that the matter may be remitted back to the Tribunal for considering the claim of the assessee for deleting the various additions made in the block assessment made under Section 158BC of the Income Tax Act related to regular assessments, without appreciating the amendments made by the Finance Act, 2002 with retrospective effect from 01.07.1995 to Sections 158B(b), 158BB(i) and 158BB (1)(c).

11. The learned counsel for the revenue also does not seriously object to the said prayer of the counsel for the assessee to remand the case to the Tribunal for fresh consideration taking note of the amendments brought to the Finance Act, 2002 with effect from 01.07.1995.

12. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, we are inclined to remit the matter back to the Tribunal leaving the questions of law raised in these appeals open to be decided in appropriate cases.

13. Accordingly, the impugned order dated 05.06.2009 passed by the Tribunal is set aside and the matter is remanded to the Tribunal to consider the effect of the amendments brought to the Finance Act, 2002 with effect from 01.07.1995 to the case of the assessee on merits and in accordance with law. Such an exercise be completed within a period of six months from the date of receipt of a copy of this order.

14. The Tax Case Appeals are disposed of in the above terms. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rsh/vkr

To

1. The Income Tax Appellate Tribunal,
   Madras "B" Bench, Chennai.

2. The Commissioner of Income Tax III
   Chennai.

3. The Commissioner of Income Tax (Appeals)Central II
   Chennai – 600 034.

4. The Deputy Commissioner of Income Tax,
   Central Circle III (4),
   Chennai – 34.

+2ccs to Mr.Ravikumar, Advocate, S.R.Nos.15114, 15116

TCA No. 1108 of 2009
and
TCA No. 284 of 2010

MG(CO)
SU(05/04/2022)