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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

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

T.C.A. No.746 of 2009

The Lakshmi Mills Co. Ltd.,
#1100, Avanashi Road,
Pappanaickenpalayam,
Coimbatore-641 037.

... Appellant

Vs.

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

... Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 13.02.2009 made in ITA.No.2036(Mds)/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2001-02 preferred against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, order dated 06.06.2007 made in Appeal No.307/06-07 against the order of the Assistant Commissioner of Income Tax, Company Circle IV(I) Coimbatore, order dated 28.03.2006 made in PAN/GIR No.AAAct7564R for the Assessment Year 2001-02.

For Appellant : M/s.Philip George

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
Mrs.K.G.Usharani
Junior Standing Counsel

JUDGMENT

MOHAMMED SHAFFIQ, J.

This is an assessee's appeal. The challenge made herein is to the order dated 13.02.2009 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, in ITA No.2036(Mds)/2007, pertaining to the assessment year 2001-02.



2. On 14.09.2009, the aforesaid appeal was admitted on the following substantial questions of law:

A. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in upholding the jurisdiction of the assessing officer u/s 154 to adjust the unabsorbed depreciation loss of earlier assessment years against the current year's business income, while computing deduction u/s 80HHC?.

B. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in not holding that the issue of setting off brought forward unabsorbed depreciation of earlier years against the current year's business income was a debatable issue and therefore there was no apparent mistake for the assessing officer to exercise the jurisdiction u/s 154 of Income Tax Act, 1961?

3. The appellant is engaged in the business of manufacture and sale of cotton yarn, cotton fabrics and staple fibre yarn. For the assessment year 2001-02, they had filed its return admitting a total income of Rs.3,98,17,147/-, which was processed u/s 143(1) of the Income Tax Act, 1961 on 29.10.2001. Subsequently, the appellant filed a revised return admitting net adjusted income of Rs.3,82,35,240/- on 24.06.2002, which was processed under section 143(1) on 29.10.2002. After scrutiny of the same, the assessment under section 143(3) was completed on 30.03.2004, determining the total income at Rs.4,69,55,518/-. The said assessment was reopened according to the Appellate Authority's order, at the instance of the assessee and the reassessment order was passed on 28.03.2006 under section 143(3) r/w section 147 of the Income Tax Act, 1961, determining the business income at Rs.4,42,39,895/-, after adjusting unabsorbed depreciation of the Assessment Years 1999-2000 and 2000-01 totalling to Rs.1,57,77,978/-.

4. While so, pointing out that while calculating 80 HHC deduction, the adjusted business profits was taken at Rs.6,00,17,873/- instead of Rs.4,42,39,895/- by mistake and 80HHC deduction was allowed excessively, notice under section 154 was issued, as the mistake being apparent on the face of record. The appellant filed its objection on 11.12.2006. Rejecting the said objection, the assessing officer held that the order dated 28.03.2006 suffers from error apparent on the face of record inasmuch as it was contrary to the decision of the Hon'ble Supreme Court in IPCA Laboratories Ltd. v. Deputy Commissioner of Income Tax, 266 ITR 521, in which, it was held that "section 80AB would override all other provisions in Chapter VI A" and accordingly, revised the assessment.

5. Aggrieved by the rectification of assessment on



15.12.2006, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-1, Coimbatore, who referring to the decision of the Hon'ble Supreme Court in IPCA Laboratories Ltd (supra), found that the overriding effect of section 80AB in the computation of total income over all other sections in Chapter VIA, was a settled issue and thus, held that the revision order under section 154 was legal and justified.

6. Being dissatisfied with the order passed by the Appellate Authority, the appellant carried the matter by way of an appeal before the Income Tax Appellate Tribunal. After analysing the entire materials and legal position, the Tribunal affirmed the order of the First Appellate Authority, after having held that the exercise of jurisdiction under section 154 was valid and justifiable. The findings of the Tribunal may be relevant and are extracted hereunder:

"It is clear that the decision of the Hon'ble Supreme court in the case of IPCA Laboratory cited supra, was rendered on 11.03.2004, which was available before the completion of the assessment under section 143(3), which was completed on 28.03.2006, wherein the business income was determined at Rs.4,42,39,895/-. Further it seems to be a simple case of arithmetic mistake because in the assessment the business profit was determined at Rs.4,42,39,895/- and therefore deduction had to be given accordingly in view of the decision of the Hon'ble Supreme Court in the case of IPCA Laboratory Ltd., wherein it was clearly held that section 80AB will override the provisions of section 80HHC. In view of this we find nothing wrong in the order of the Commissioner(Appeals) upholding the rectification order passed by the Assessing Officer."

Therefore, the assessee is before this court with the present appeal, suggesting the substantial questions of law, as stated supra.

7. Though the learned counsel for the appellant would agree that the issue, as to whether it is permissible to adjust unabsorbed depreciation loss of the earlier assessment year, while computing deduction under section 80HHC, stands decided against the appellant/assessee, he attempted to suggest that the said issue was debatable, when the assessing officer sought to invoke his power under section 154 of the Income Tax Act, 1961, on the premise that the said issue was finally resolved in favour of the Revenue by the Hon'ble Supreme Court only on 17.05.2007, in the case of Commissioner of Income Tax v. Shirke Construction Equipment Ltd, [2007] 291 ITR 380 (SC), in which, the decision rendered on 24.07.2000 by the Bombay High Court, in the case of Commissioner of Income Tax v. Shirke Construction Equipment Ltd, [2000] 246 ITR 429 (Bombay), was reversed.



8. We find that the Hon'ble Supreme Court in the decision in IPCA Laboratories Ltd (supra) had already overruled the decision of the Bombay High Court in the case of Commissioner of Income Tax v. Shirke Constructions Equipments Ltd (supra). Importantly, it is to be noted that the said decision in IPCA Laboratories Ltd. (supra) was delivered on 11.03.2004 much prior to the order of assessment dated 28.03.2006. Thus, we are of the view that the submission of the learned counsel for the appellant that the issue was debatable, when the assessing officer invoked section 154, lacks merit.

9. It is trite law that an order contrary to law declared by the Hon'ble Supreme Court, would constitute an error apparent on the face of record. Therefore, the order passed by the assessing officer exercising his jurisdiction conferred under section 154 of the Income Tax Act, 1961, as affirmed by the Appellate Authority as well as the Appellate Tribunal, warrants no interference at the hands of this court.

10. Accordingly, the appeal filed by the assessee stands dismissed, answering the substantial questions of law, in favour of the Revenue. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

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

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

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

+1cc to Mr.M.Swaminathan, Advocate SR.No.3272

+1cc to Mr.M.P.Sethilkumar, Advocate SR.No.2853

T.C.A. No.746 of 2009

CP(CO)
GMY(03/02/2022)