IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.158 OF 2010

Peacock Apparels (P) Ltd.,
82, Aruppukottai Road,
Madurai - 625 012. ...Appellant

Versus

Assistant Commissioner of Income-Tax,
Company Circle - 1,
Madurai. ...Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.8/Mds/08 dated 27.11.2009.

Against the order of the Commissioner of Income-Tax-1, No.2, V.P.Rathinasamy Nadar Road, Bibikulam, Madurai-625 002 dated 28.11.2007 C.No.401/3/2007-2008 PAN/GIR/No.AACCP2308P for the Assessment Year 2003-2004 and against the order of the Deputy Commissioner of Income-Tax, Company Circle-I, Madurai, dated 15.04.2005 PA.Number AACCP2308P, Company Circle-I, Madurai, Residential Status - Resident for the Assessment year 2003-2004.

For Appellant : No Appearance

For Respondent : Mrs.V.Pushpa,
Junior Standing Counsel

JUDGMENT

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

According to the appellant / assessee, they are carrying on business in manufacturing and exporting garments. For the assessment year 2003-04, they filed its return on 31.10.2003, admitting an income of Rs.12,77,616/-. After scrutiny of the same, the assessment was completed on 15.04.2005 under section 143(3) of the Income-tax Act, 1961 (in short, 'the Act'), determining the total income at Rs.13,02,616/-. Thereafter, notice under section 263 came to be issued by the Commissioner of Income-tax-I, Madurai, on the premise that while computing the income, the assessing officer allowed the deduction of Rs.1,27,52,945/- with respect to export of garments, claimed by the appellant / assessee under section 10B of the Act, however, in the profit and loss account, it was noticed that the business income includes other income to the tune of Rs.1,75,917/- (Rs.1,08,797/- towards interest receipts + Rs.67,120/- towards quota premium), which was not export oriented income to be qualified for deduction under section 10B of the Act. Upon receipt of the notice, the appellant / assessee through its authorised representatives, made its submissions. However, by order dated 28.11.2007, the Commissioner of Income Tax-I, Madurai, rejected the same and directed the assessing officer to exclude the said sum of Rs.1,75,917/- out of deduction under section 10B and recompute the total income accordingly. Challenging the said order, the appellant / assessee preferred an appeal before the Income Tax Appellate Tribunal, Chennai 'B' Bench, in ITA No.8/Mds/2008, which was dismissed by order dated 27.11.2009, after having held that "it is very well established that there was an error in the order of the Assessing Officer by granting deduction under section 10B of the Act to the items, which were not eligible and this resulted in prejudice to the revenue and thus, the learned CIT had correctly exercised his jurisdiction under section 263 of the Act". Aggrieved over the order so passed by the Tribunal, the appellant / assessee has come up with this tax case appeal.

2.On 22.02.2010, this court admitted this appeal on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal is right in affirming the order of the revisional authority under section 263 contrary to the decisions of the Apex Court reported in (2000) 243 ITR 83 [Malabar Industrial Co. Ltd. v. C.I.T] and (2007) 295 ITR 282 [C.I.T. v. Max India Ltd] and jurisdictional High Court reported in (2007) 294 ITR 121 [C.I.T v. Mepco Industries Ltd] especially when the Assessing Officer has adopted a possible view?"

3.When the matter was taken up for hearing on two occasions viz., 07.03.2022 and 21.03.2022, there was no representation for the appellant/assessee and hence, the same was directed to be listed under the caption "For Dismissal" on 28.03.2022 i.e., today. Accordingly, the case is listed today under the caption, "For Dismissal". However, there is no representation for the appellant/assessee.

4.On the other hand, Mrs.V.Pushpa, learned standing counsel appearing for the respondent / Revenue submitted that during the pendency of this appeal, the respondent by order dated 24.03.2008, has given effect to the order dated 28.11.2007 passed by the Commissioner of Income Tax – I, Madurai under Section 263 of the Income-tax Act; and the said order dated 24.03.2008 was put to challenge by the appellant/assessee by filing I.T.A.No.0022/08-09 before the Commissioner of Income Tax (Appeals) – I, Madurai, however, the said appeal ended in dismissal on 28.01.2010. In support of her submissions, the learned counsel produced the copies of the orders so passed by the authorities concerned, in the form of typed set of papers. Therefore, according to the learned counsel, nothing survives for further adjudication in this appeal.

5.In view of the subsequent development as stated above, we dismiss this tax case appeal, leaving the substantial question of law open for consideration in an appropriate case. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrr

To

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

2. The Assistant Commissioner of Income-Tax,
   Company Circle – 1, Madurai.

3. The Commissioner of Income-Tax-1,
   No.2, V.P.Rathinasamy Nadar Road,
   Bibikulam, Madurai-625 002.

4. The Deputy Commissioner of Income-Tax,
   Company Circle-I, Madurai.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.20844

T.C.A.No.158 of 2010

AD(CO)
PM/22/04/2022