



T.C.A.No.289 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal No.289 of 2011

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Commissioner of Income Tax-I,
Trichirapalli.

.. Appellant

Vs.

M/s.Atlantic Fabrics,
SF No.1658 & 1659,
Amaravathy Nagar,
Andankoil, Karur-639 002.

.. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 25.02.2011 passed in ITA.No.1690/Mds/2009 (Assessment Year 2004-2005) on the file of the Income Tax Appellate Tribunal, Chennai-C-Bench.

For appellant : M/s.V.Pushpa, Standing Counsel for Income Tax

For respondent: Mr.N.Quadir Hosegn



T.C.A.No.289 of 2011

JUDGMENT

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The above Tax Case Appeal was admitted by this Court on 10.08.2011 on the following substantial questions of law:-

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee, a supporting manufacturer, was entitled to deduction under Section 80-HHC in respect of the DEPB/Duty Drawback and similar incentives disclaimed in its favour by the exporter ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in reducing the addition made by the Assessing Officer with regard to under-statement of closing stock, from Rs.2,41,43,400/- to Rs.2,07,074/-, when there was no evidence available on record and merely on the basis of conjectures and surmises ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in concluding that the assessee showed quantitative details and tallied the same with the figure of sale during the course of assessment proceedings, when actually there was a specific finding that the assessee was not maintaining any stock register and



T.C.A.No.289 of 2011

there was no correlation with the yarn purchases and the cloth produced ?

and

(iv) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in accepting the claim of the assessee that it had booked sales in its Books of Accounts; but later reversed the same to the extent of Rs.2,41,43,400/-, as the goods could not be supplied to the purchaser, since the same were not received before the end of the Accounting Year from the sub-contractors; when this was highly probable and contrary to the prevailing business realities and practices followed in trade ?

2. Though the Tax Case Appeal was admitted on the above four substantial questions of law, the learned Standing Counsel appearing for the appellant confined her arguments to the following two substantial questions of law alone:

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the respondent-



T.C.A.No.289 of 2011

assessee, being a supporting manufacturer, is entitled to deduction under Section 80-HHC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in respect of the DEPB/Duty Drawback and similar incentives disclaimed in its favour by the exporter ? and

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in reducing the addition made by the Assessing Officer with regard to under-statement of closing stock from Rs.2,41,43,400/- to Rs.2,07,074/-, when there was no evidence available on record and merely on the basis of conjectures and surmises ?

3. Insofar as the first question of law as to the eligibility of a supporting manufacturer to the benefit under Section 80-HHC of the Income Tax Act, is concerned, it is submitted in unison by both sides that the issue now stands resolved by a decision of the Supreme Court reported in 2020 (19) SCC 384 (CIT Vs. Carpet India), wherein, the Apex Court, while stating that the supporting manufacturer is to be treated on par with the direct exporter for the purpose of deduction under Section 80-HHC of the Income Tax Act, left the issue open to the assessee therein to claim the



T.C.A.No.289 of 2011

benefits in terms of the provisions of Section 80-HHC of the said Act, on the basis of the documents which may be produced by the respondent-assessee based on the above judgment of the Supreme Court in the case of Carpet India.

4. In the light of the above decision of the Supreme Court, the above issue is remitted back to the assessing officer to re-work the extent of the benefits the respondent/assessee is entitled to as a supporting manufacturer, keeping in view the provisions of Section 80-HHC of the Act and also the judgment of the Supreme Court in Carpet India (supra).

5. Insofar as the second question of law is concerned, we find that it is essentially a question of fact. The assessing officer arrived at certain discrepancies regarding the closing stock as there was a difference between the respondent-assessee's total turn-over as per the Books of Accounts and the Accounted total sales. Before the assessing officer, the respondent-assessee explained the reason for variation in the total turn-over as per the Books of Accounts, which was Rs.21,47,95,035/-, but accounted by the



T.C.A.No.289 of 2011

assessee at Rs.19,06,51,635/- only towards total sales. But the above explanation of the respondent-assessee was rejected by the assessing authority and the order of the assessing authority was also confirmed by the order of the appellate authority, as the above addition of R.2,41,43,400/- was towards undisclosed stock. However, the Income Tax Appellate Tribunal, on examination of the order of the assessing officer as well as the appellate authority, proceeded to hold that the assessing officer rejected the explanation offered by the assessee on the basis of speculation and the Income Tax Appellate Tribunal proceeded to accept the contention/explanation offered by the respondent-assessee herein. The relevant portion of the Tribunal's order is extracted below:

"9. In our considered opinion, the time of 45 days capitulated (sic).. calculated for finished production is purely a speculation of the Assessing Officer. The assessee has only one customer i.e. IKEA and all the products are supplied to it at a stipulated and agreed standards. It was explained that the assessee purchases the goods as per specifications from various co-operative societies as well as individuals who have their own stock and keep them in production as per the supply needed by the assessee. It was stated that certification of Handloom Export Promotion Council (HEPC) is not a must in each



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T.C.A.No.289 of 2011

and every export and it applies only in case of few countries. It was so stated to explain the doubt of the Assessing Officer that whatever few items were inspected by the HEPC were relating to those items and not all the items supplied to IKEA. In relation to clearance at the customer's point, it was explained that the Clearing Agents do the job and that the time taken for this does not have any relevance to the supply being made by the assessee. We are in agreement with the above explanation of the assessee because there is no contrary evidence available on the record except for the subjective opinion of the Assessing Officer."

6. We find that the second question of law is essentially a question of fact. Admittedly, there is no method prescribed under the Act or the Rules framed thereunder, to determine the closing stock. Assuming there are different methods to arrive at the closing stock and the Tribunal chooses any one, the same would not give rise to a question of law, unless shown to be perverse or arbitrary.

7. As a matter of fact, insofar as the second question of law is concerned, the Revenue has not even challenged the findings of the Income Tax Appellate Tribunal as being perverse or being palpably arbitrary.



T.C.A.No.289 of 2011

Hence, we are not inclined to interfere with the impugned order of the Income Tax Appellate Tribunal as the above issue does not give rise to any question of law much less substantial question of law.

8. In the circumstance, the respondent-assessee may make a representation to the appellant-Commissioner of Income Tax (assessing officer) and produce necessary documents, if any, they intend to rely upon in support of their claim under Section 80-HHC as a "supporting manufacturer" within a period of one month from the date of receipt of a copy of this order. The above exercise of determination of the benefits, if any, which the respondent/assessee is entitled as a supporting manufacturer in terms of Section 80-HHC of the Income Tax Act and the judgment of the Supreme Court stated supra, shall be completed by the Appellant / Commissioner of Income Tax-I, Trichirapalli, within a period of three months from the date of receipt of a copy of the representation by the respondent-assessee.



T.C.A.No.289 of 2011

9. With the above observations and directions, the Tax Case

Appeal is disposed of. There shall be no order as to costs.

(S.V.N., J) (M.S.Q.,J)

23.12.2022

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation case: Yes/no

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To

1. Commissioner of Income Tax-I, Trichirapalli.
2. Income Tax Officer, Trichirapalli Region, Trichirapalli.
3. The Assistant Registrar,
Income Tax Appellate Tribunal, Chennai Bench-A, Chennai.
4. The Deputy Commissioner of Income-Tax, Circle-II, Trichirapalli.

Page No.9/10



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T.C.A.No.289 of 2011

S.VAIDYANATHAN, J
and
MOHAMMED SHAFFIQ, J

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T.C.A.No.289 of 2011

23.12.2022

Page No.10/10