IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

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

T.C.A. NO.966 OF 2013

Commissioner of Income Tax
Madurai ...Appellant

Versus

M/s.Ramco Cements Limited
[Formerly known as M/s. Madras Cements Limited
Rajamandiram
Rajapalayam - 626 117
PAN: AABCM8375L ...Respondent
(cause title amended vide order of this court dated 10.07.2014 made in MP.No.1 of 2014 in TCA.No.966 of 2013)

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 11.06.2013 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, in I.T.A. No. 2265/Mds/2012 against the order of the Commissioner of Income Tax (Appeals)-II, Madurai dated 03.09.2012 PA.No.AABCM8375L, ITA Nos.327/2011-12 & 410/2011-12 and against the order of the Additional Commissioner of Income Tax, Virudhunagar Range dated 29.12.2011, PAN.AABCM8375L, Ward Circle 1, Virudhunagar. Status-Company for the Assessment Year 2009-10.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
and Mrs. V. Pushpa
Junior Standing Counsel

For Respondent : Mr.P.J.Rishikesh

JUDGMENT

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

This appeal is filed at the instance of the appellant/Revenue against the order dated 11.06.2013 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A. No. 2265/Mds/2012 relating to the assessment year 2009-2010.

2. The respondent / assessee is engaged in the business of manufacture and sale of cements. They filed its return of income for the assessment year 2009-2010 admitting a total income of Rs.1,58,55,60,958/- on 28.09.2009. After processing the same under Section 143 (1) of the Income Tax Act (in short, "the Act"), notice under Section 143 (2) was issued by the appellant. Upon receipt of the same, the representative of the respondent / assessee appeared for enquiry and produced the required particulars called for by the appellant. Thereafter, the assessing officer passed the assessment order dated 29.12.2011 under section 143 of the Act, inter alia disallowing the claim under section 80IA. Aggrieved by the same, the respondent/assessee preferred an appeal, which was allowed by the CIT(A) by order dated 03.09.2012, on the ground that the the provisions of section 80-IA(7) requiring filing of audit report along with return are not mandatory, but directory and if the audit report is filed at any time before framing of assessment, then requirement of section 801A(7) would be met. Challenging the same, the appellant / Revenue filed an appeal before the ITAT, which, by order dated 11.06.2013, dismissed the same. Therefore, this tax case appeal by the appellant / Revenue.

3. The learned senior standing counsel appearing for the appellant submitted that during the course of hearing, the Assessing Officer required the respondent / assessee to produce the copy of audit report of Chartered Accountant as required under Section 801A evidencing the purchase of windmill, income derived thereon and expenditure incurred. However, the respondent /assessee did not file the same. Therefore, the Assessing Officer rightly disallowed the claim of the assessee under Section 80IA for want of report of the Chartered Accountant. However, the CIT(A) erred in holding that filing of audit report along with the return of income is not mandatory, but directory; and the audit report can be filed at any time before the framing of assessment and if it is filed, then it can be construed that the requirements under Section 80IA(7) would be met and accordingly, allowed the appeal filed by the respondent / assessee, which was also affirmed by the Tribunal. The learned counsel further submitted that section 80IA(7) specifically requires the assessee to produce the report of audit in the prescribed form along with the return of income and hence, it cannot be dispensed with. Thus, according to the learned senior standing counsel submitted that the order of the Tribunal is contrary to the mandatory requirement as indicated in Section 80IA(7) of the Act, which is liable to be set aside.

4. On the other hand, the learned counsel for the respondent / assessee would contend that for claiming deduction under section 80IA, it is not mandatory for the assessee to

produce the audit report along with the return of income and it can be furnished at any time before the framing of assessment. In this context, the learned counsel placed reliance on the decision of the Karnataka High Court in Sutures India (P) Ltd. v. Commissioner of Income Tax, Bangalore [2021 (125) Taxmann.com 226 (Karnataka)] wherein it was held that “the assessee is entitled to deduction under Section 80IA of the Act even if the audit report is filed at the appellate stage”. Therefore, the learned counsel submitted that the order of the Tribunal does not warrant any interference by this court.

5. We have heard the learned counsel for both sides and perused the materials placed on record.

6. This Court, by order dated 02.04.2014 admitted the appeal on the basis of the following substantial question of law for consideration:

> “Whether on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that provisions of Section 80IA(7) is not mandatory and only directory when Section 80IA(7) clearly stipulates that the report should be filed along with the return of income?"

7. For better appreciation, the provisions of section 80IA (7) is extracted below:

> “The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the explanation below sub-section(2) of Section 288, [before the specified date referred to in section 44AB and the assessee furnishes by that date]* the report of such audit in the prescribed form duly signed and verified by such accountant.”

> * substituted for “and the assessee furnishes, along with his return of income” by the Finance Act, 2020 with effect from 1-4-2020.

8. Thus, it is crystal clear from the aforesaid provisions that the assessee should furnish the audit report along with his return of income, only pursuant to the amendment by the Finance Act, 2020 with effect from 01.04.2020. Prior to that, the requirement of filing the audit report along with the return of income is not mandatory, but directory and the audit report can be filed at any time before framing of assessment, so as to meet out the requirement of section 80IA(7). It is also settled law

that the taxing statute should be read prospectively and not retrospectively. Applying the said legal proposition to the facts of the present case, wherein it is an admitted fact that the respondent / assessee furnished the audit report during the course of assessment relating to the assessment year 2009-10 and they very well complied with the requirement of section 80IA(7) for claiming deduction under section 80IA. Therefore, the CIT(A) allowed the claim of the respondent / assessee, which was also rightly affirmed by the ITAT and the same do not call for any interference at the hands of this Court.

9. At this juncture, it is apposite to refer to the decision of the Karnataka High Court in Sutures India (P) Ltd., v. Commissioner of Income Tax, Bangalore, referred to above by the learned counsel for the respondent / assessee, wherein it was categorically held as under:

> "...8. In the backdrop of aforesaid well settled legal position, we may advert to the facts of the case. The Assessee had filed Form No.10CCB of the Act along with written submissions before the Commissioner of Income-tax (Appeals), which was acknowledged by him in the order dated 11-3-2008. A bench of this court in CIT v. Ace Multitaxes Systems (P.) Ltd [2009] 317 ITR 207 (Kar.) has taken a view that assessee is entitled to deduction under Section 80IA of the Act even if the audit report is filed at the appellate stage. Similar view has been taken by Madras High Court in CIT v. A.N.Arunachalam [(1994) 75 Taxman 529 / 208 ITR 481 (Mad)]. Thus, the view taken by the assessing officer with regard to eligibility of the assessee to claim deduction under Section 80IA of the Act was one of the possible views. We are fortified in our aforesaid conclusion in view of the order passed by the Commissioner of Income-tax under Section 263 of the Act. The relevant extract of which reads as under:
>
> "The order u/s.143(3) dated 14-06-2005 is, therefore, modified to the extent that deduction claimed u/s.80IA is withdrawn and for the purpose of computing deduction u/s.80HHC, deduction allowable u/s.80IA has to be reduced from the business profits. Since deductions u/s 80IA is being denied, there will be no change in the computation of deduction u/s.80HHC for the time being. However, in case it is held by the appellate authority that the assessee is entitled to deduction u/s.80IA, the deduction u/s.80HHC

will have to be recomputed keeping in mind the provisions of Section 80IA(9)."

10. In such view of the matter, the substantial question of law is decided in favour of the respondent / assessee and against the Revenue. Accordingly, the Tax case Appeal fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

dhk/rsh

To

1.The Commissioner of Income Tax
Madurai .

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

3.The Commissioner of Income Tax (Appeal)-II
Madurai.

4.The Additional Commissioner of Income Tax,
Virudhunagar Range, Virudhunagar.

+1cc to Mr.M.Swaminathan, Advocate Sr.No.22618

+1cc to Mr.P.J.Rishikesh, Advocate Sr.No.22892

TCA No.966 of 2013

AD(CO)
RVM(10/06/2022)