IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.09.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.235 of 2012

The Assistant Commissioner of Income Tax,
Chennai. .. Appellant

Vs.

M/s.Raj Kumar Impex Private Limited,
B-603, Keshav Durgar Apartments,
No.1, East Avenue,
Keshavperumal Puram, RA Puram,
Chennai – 600 028. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 14.03.2012 passed in I.T.A.No.1581/Mds/2011 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai.

For Appellant : Mrs.V.Pushpa
Senior Standing Counsel
For Respondent : Mr.Vikram Vijayaraghavan

**JUDGMENT**

[Judgement of the Court was delivered by R.MAHADEVAN, J.]

This Tax Case Appeal is filed by the Revenue against the order dated 14.03.2012 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1581/Mds/2011, relating to the Assessment Year 2002-03, raising the following substantial question of law:

> *"Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the deduction under section 80IB of the Act was not be reduced before calculating the eligible deduction under section 80HHC of the Act."*

2.Today, when the matter was taken up for consideration, the learned counsel appearing for both sides jointly submitted that in an identical case in *TCA No.457 of 2021 filed by the Revenue against M/s.Carborandum Universal Ltd*, this court has considered the very same issue as raised herein, and passed the following judgment on 16.09.2021:

> *"...*
>
> *2.The Revenue has raised the following substantial questions of law for consideration:*
>
> > *"1.Whether on the facts and circumstances of the case, the Tribunal was right in holding that deduction*

*under section 80IA should not be deducted from the profits and gains of business before computing deduction under Section 80HHC?*

*2.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that business profits as per Explanation (baa) of Section 80HHC of the Act is to include deduction already allowed under Section 80IB?*

*3.Whether on the facts and in the circumstances of the case, in view of Section 80IA(9), Tribunal was justified in holding that the assessee is entitled to simultaneous deduction under Section 80HHC and 80IB on the same profits?"*

*...*

*4.It is not disputed before us that the above substantial questions of law were considered by the Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax v. Micro Labs Ltd. reported in (2016) 380 ITR 0001 (SC). In the light of the difference of opinion between the Hon'ble Judges, the matter has been directed to be placed before the Hon'ble Chief Justice of India, so that the matter can be referred to a larger Bench.*

*5.We are informed that till date, the matter has not been disposed of and is pending before the Hon'ble Supreme Court. We are also informed that, identical issue has been referred for consideration of the Hon'ble Full Bench of this Court in T.C.A.No.1195 of 2009, which was last listed before the Hon'ble Full Bench during March, 2015, and the matter is still pending.*

*6.In any event, the decision of the Hon'ble Supreme Court has to be awaited and therefore, we are of the view that it would be unnecessary to keep this appeal pending before this Court, instead of which, the matter can be restored to the file of the Assessing Officer, so as to enable him to await the decision of the larger Bench of the Hon'ble Supreme Court in the reference made in Micro Labs Ltd. (supra).*

> *7.For such reason, this Tax Case Appeal is allowed and the order passed by the Tribunal, as well as the Commissioner of Income Tax (Appeals), Large Taxpayer Unit, Chennai, are set aside and the matter is restored to the file of the Assessing Officer, who shall await the decision of the larger Bench of the Hon'ble Supreme Court, in the reference made in the case of Micro Labs Ltd. (supra). Consequently, the substantial questions of law are left open. No costs."*

It is also submitted that the case in *Micro Labs Ltd. (supra)* is yet to attain finality.

3. Considering the above submissions made by the learned counsel appearing for both sides and also following the aforesaid judgment of this court, we are inclined to dispose of this appeal in the same lines. Accordingly, the orders of the authorities below are set aside and the matter is restored to the file of the Assessing Officer, who shall await the decision of the Larger Bench of the Hon'ble Supreme Court in the reference made in the case of *Micro Labs Ltd (Supra)*. Consequently, the substantial question of law raised herein is left open.

4. This tax case appeal stands disposed of, in the above terms. No costs.

[R.M.D., J.] [M.S.Q., J.]
05.09.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To
1.Income Tax Appellate Tribunal,
'C' Bench, Chennai.

2.The Assistant Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax (Appeals)-VI
Chennai.

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd

T.C.A.No.235 of 2012

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