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T.C.A.No.946 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and

THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

T.C.A.No.946 of 2010

M/s.Super Spinning Mills Ltd.,
Elgi Towers, Green Fields,
737-D, Puliakulam Road,
Coimbatore – 641 045.

.... Appellant

VS

The Assistant Commissioner of Income Tax,
Company Circle 1 (2),
Coimbatore.

.... Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961
against order of the Income Tax Appellate Tribunal, Chennai, A Bench,
dated 30.03.2010 in ITA No. 768/MDS/2008 in respect of assessment
year 1998-99.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel



T.C.A.No.946 of 2010

JUDGMENT

(Delivered by Dr. ANITA SUMANTH..J)

This appeal is filed by the assessee challenging an order of the Income Tax Appellate Tribunal (in short 'ITAT'/'Tribunal') dated 30.03.2010 raising the following substantial question of law, admitted on 01.11.2010.

Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal ought to have held that the term “record” for the purposes of Section 154 of the Income Tax Act, 1961 shall include the entire records of the assessee for all the assessment years and not pertaining to only the year under consideration?

2. The sequence of events commences from assessment year (AY) 1992-93 when a claim in terms of the applicable provision of the Income Tax Act, 1961 (in short 'Act') had been made by the assessee on accrual basis in respect of an amount of Rs.65,22,000/-, being additional charges levied by the Andhra Pradesh State Electricity Board (APSEB) for belated clearance of energy bill (also known as surcharge for late payment, and referred to as hereinafter as ‘surcharge’).

3. The assessee had remitted 1/3rd of the demand raised and the remaining had been disputed before the High Court. The assessee had



T.C.A.No.946 of 2010

also obtained interim protection from the High Court. Before the Assessing Officer, the assessee took the stand that since the matter was pending in litigation and the claim had been made on accrual basis, seeing as the assessee followed mercantile system of accounting, the claim of expenditure should be allowed in AY 1992-93.

4. The Assessing Authority, however, disagreed with the assessee, taking the stand that only a claim in respect of amounts actually paid was liable to be allowed. The dispute that had been raised before the High Court ultimately culminated in an order passed in 1997 confirming the levy of surcharge.

5. Hence, according to the assessing authority, the claim, if at all, would crystallize only in 1997 and hence the assessee would not be entitled for its claim for surcharge in AY 1992-93. An order of assessment in respect of AY 1992-93 came to be passed along the aforesaid lines on 28.03.1995.

6. The assessment was challenged and was confirmed in appeal by the Commissioner of Income Tax (Appeals) (in short 'CIT(A)') vide order dated 06.07.1995, as against which, a second appeal was filed before the Tribunal.



7. The Tribunal, vide order dated 26.07.2005, also confirmed the conclusion of the assessing authority, however, with the caveat that if the dispute related to a contractual liability, the assessee would be entitled to deduction in the year in which the dispute had been settled. The issue was set aside by the Tribunal to the file of the Assessing Officer to be re-done in accordance with law. The operative portion of the Tribunal's order reads thus:

'18. We have heard the rival submissions in the light of material placed before us and precedents relied upon. CIT(A) has held that this amount was disputed. It was not paid to the Government. As such the claim was inadmissible as per the prescription of section 43B of the Act. It is not clear that how the amount of disputed liability towards the State Electricity Board comes within the ken of section 43B. An accrued liability though disputed in appeal etc, is allowable in the year in which such liability has accrued. Such disputed liability is deductible even though recovery proceedings in respect thereof have been stayed till the determination of the proper liability. This is so because by such stay the liability to pay is not at all obliterated. However, if the dispute is regarding contractual liability, assessee is entitled to deduction in the accounting year in which dispute is settled. This view was taken by the Hon'ble Bombay High Court in the case of CIT V. Phalton Sugar Works Ltd (162 ITR 622) (Bom.). We find that in the present case the matter is not correctly appreciated. Revenue authorities proceeded on the basis that the claim is disallowable under section 43B. Factual details are not gathered. Exact nature of liability is not ascertained. We therefore, in the interest of justice set aside the impugned order and restore it to the file of the AO with direction to



WEB COPY



T.C.A.No.946 of 2010

decide it de novo in accordance with law after providing adequate opportunity to the assessee of being heard.'

8. Consequence was given to the order of the Tribunal vide order dated 19.01.2006 where the Assessing Authority accepted the claim in respect of 1/3rd of the amount which had actually been paid, and rejected the claim in respect of the balance, on the ground that the assessee followed the mercantile system of accounting.

9. Taking a cue from the observations of the Tribunal, the assessee filed a petition under Section 154 of the Act in respect of AY 1998-99, seeking rectification of what it believed, was a mistake apparent on record. Inter alia, the assessee makes the position clear before the Assessing Authority that the demand arose on a contractual liability and that the dispute had, in fact, been settled in the financial year relevant to AY 1998-99. The facts have been captured in that petition as follows:

8. Rs.65,22,000/- paid as additional charges to APSES (Andhra Pradesh State Electricity Board) has been disallowed in the assessment year 1992-93 vide your order dated 19-1-2006 made u/s.154 rw 254. This was in pursuance of the order of the Income Tax Appellate Tribunal dated 26th July 1995 in ITA No.1871/Mds/1995 for the assessment year 1992-93. The Income Tax Appellate Tribunal had remanded the issue of deduction of additional charges with the direction in para 18 in page 6 of the ITAT order (copy enclosed) that if the liability is an accrued liability, it shall be deducted in the



year of accrual, irrespective of whether the matter is in dispute and whether recovery proceedings thereof are stayed. If it is a contractual liability, the assessee is entitled to deduction in the accounting year in which the dispute is settled.

In the remand assessment for 1992-93 made vide order dated 19-1-2006, referred to above, the amount was not allowed for the stated reason that the dispute was settled by the High Court and the amount was crystallized in 1997. This is evident from page 2 of the assessment order for that year (copy enclosed) the order of the Andhra Pradesh High Court in the matter was made on 29 September 1997. Therefore, it must consequently be allowed as a deduction in AY 1998-99, which has not been allowed. Hence, the amount of Rs.65,22,000/- should be deducted in the assessment year 1998-99. Clearly, this is a mistake apparent on record.

10. The Assessing Authority, however, passed order dated 18.12.2006 under Section 154 rejecting the assessee's claim by way of a cryptic one line order to the effect '*All other demands raised by the assessee in its petition are not mistake apparent from records, thus not considered.*'.

11. In our considered view the claim of the assessee merited a detailed consideration as Section 154 provides for rectification of mistakes apparent from records and there ought to have been a finding of the assessing officer as to why the issue raised by the assessee did not constitute a mistake apparent on record. A bald assertion of the nature



T.C.A.No.946 of 2010

made, does not satisfy the statutory stipulation.

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12. In first appeal before the CIT(A), the assessee reiterated the claim by way of a specific ground of appeal. The error committed by the assessing authority was, however, perpetrated in first appeal as well, where the CIT(A), vide order dated 06.02.2008, merely confirms the order under Section 154 stating that he agrees with the assessing officer that there is no mistake apparent on record, liable to be rectified. Again, we find no discussion in the order in support of the conclusion of the officer.

13. The grounds of appeal filed before the Tribunal are also detailed reiterating the fact that the payment of surcharge has, in fact, been made in the financial year relevant to the present assessment year. The Tribunal however, also confirms the conclusion of the lower authorities vide order dated 30.03.2010, impugned in this appeal.

14. The basis on which the Tribunal rejects the claim is three fold. Firstly, the Tribunal states that if at all the assessee was of the opinion that the contractual liability had been settled in the previous year relevant to AY 1998-99, it ought to have been made the claim in the return itself. This conclusion does not appeal to us as the petition under Section 154



T.C.A.No.946 of 2010

has been filed solely for the reason that the claim was not made in the return of income.

15. The application of Section 154 would extend to situations such as the present where legitimate claims have been omitted to have been made, for a variety of reasons. Hence, the observations of the Tribunal rejecting the claim of the assessee on this ground are completely misconceived.

16. The second ground is that, the directions of the Tribunal in order dated 26.07.2005 in the appeal filed for AY 1992-93, was not so unequivocal that the assessee could claim relief solely based on such directions. We agree. However, the appellant has not rested its claim solely on those observations but has been proactive in moving an application seeking rectification of Return for AY 1997-98. It was hence incumbent upon the assessing officer, while disposing the application under Section 154, to have looked into the plea for rectification on the merits thereof. If at all the Assessing Officer wished to test the claim of the assessee and verify whether the amounts had actually been paid, necessary documentary evidence could well have been sought.

17. Thirdly, the Tribunal states that the Assessing Authority has



T.C.A.No.946 of 2010

not tested whether the amounts were actually paid at the time of original assessment proceedings. This statement is again misconceived for the reason that there could be no verification of a claim that was never made by the assessee in the return of income. In fact, this is the very reason why the assessee has filed a petition for rectification. The object of Section 154 cannot be defeated by reason of such mechanical and technical objections.

18. As to what constitutes 'record' for the purposes of Section 154, undoubtedly the records of assessment would include the financials for the years in question and the books of accounts including ledgers. Hence, it cannot be said that the payment of surcharge in Financial Year 1996-97 was not a matter of record. If at all any break-up/details of payments were required, nothing prevented the authority concerned to have called for the same.

19. Since the records in question are more than two decades old, we are loathe to remit the matter to the authority for verification. In order to satisfy ourselves that the amount of surcharge had, in fact, been paid as claimed, we had called for supporting documents, and the assessee has produced ledger accounts that establish payment of a sum of



T.C.A.No.946 of 2010

Rs.95,36,264/- that includes a sum of Rs.65,22,000/-, being the subject payment on 20.11.1997. The documents have been made available to the learned standing counsel as well who has also been afforded opportunity to verify the same.

20. In view of the fact that there is no dispute that the amount of surcharge was paid in the financial year relevant to the year in question, and for the detailed reasons set out herein above, we find that the order of the Tribunal impugned before us calls for intervention.

21. This appeal is allowed and the substantial question of law raised for consideration, is answered in favour of the assessee and against the revenue. No costs.

[A.S.M., J] [G.A.M., J]
21.11.2024

Index: Yes/No

Neutral Citation: Yes/No

Speaking order/non-speaking order
sl

To

The Assistant Commissioner of Income Tax,
Company Circle 1 (2),
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WEB COPY



T.C.A.No.946 of 2010

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T.C.A.No.946 of 2010

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