IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.92 of 2012 &
T.C.A.No.1312 of 2009

M/s.SICGIL India P Ltd.,
No.84, Dhun Building,
Anna Salai,Chennai – 600 002
PAN : AAACS 3767M .. Appellant in both TCAs

vs

The Assistant Commissioner of Income Tax
Company Circle VI(3),
Chennai – 600 034. .. Respondent in TCA No.92/12

The Income Tax Officer (OSD),
Company Circle VI(3),
Chennai – 600 034. .. Respondent in TCA No.1312/09

Prayer in TCA No. 92 of 2012: Appeal filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, in I.T.A.No.1902/Mds/2008.

Prayer in TCA No. 1312 of 2009: Appeal filed under Section 260A of the Income Tax Act, 1961 against order of the Income Tax Appellate Tribunal, Chennai 'C' Bench, in I.T.A.No.1058/Mds/2007.

For Appellant	:	Mr.A.S.Sriraman for Mr.S.Sridhar (in both TCAs)
For Respondent	:	Mr.J.Narayanaswamy Senior Standing Counsel (in both TCAs)

COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

Both the tax case appeals have been filed by the assessee and relate to Assessment Years (AY) 2002-03 and 2003-04.

2.We have heard Mr.A.S.Sriraman, learned counsel for Mr.S.Sridhar, learned counsel on record for the appellant and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Income Tax Department.

3.In respect of AY 2002-03, the substantial question that arises for determination is as follows:

> *'3.Whether the Tribunal is correct in law in affirming the recomputation of deduction u/s 80 IB of the Act even though the losses determined and set off against the profits of non eligible unit had taken place in the earlier Assessment Year 2001-02 and further even though sub section (5) of section 80IA of the Act referred to in the impugned order had not envisaged artificial carried forward and set off of losses of the eligible unit pertaining to the earlier Assessment Years?*

4.Whether the Tribunal is correct in law in affirming the recomputation of deduction u/s 80 IB of the Act placing reliance on a provision in Section 80 IA(5) of the Act while overlooking the provision in Section 80 AB of the Act?'

4.This questions stand decided in favour of the assessee and adverse to the revenue by virtue of a judgment of the Supreme Court in the case of *Velayudhaswamy Spinning Mills Limited v Assistant Commissioner of Income tax* (76 taxmann.com 176) holding that the notional loss of earlier years cannot be brought forward and set off against profits of the eligible business for the purpose of computation of deduction under Section 80IA of the Income Tax Act, 1961.

5.The Department has, in line with the ratio of that judgment, issued Circular bearing No.1/2016 in F.No.200/31/2015-ITA-I dated 15.02.2016 to following effect:

> '.......
>
> *The matter has been examined by the Board. It is abundantly clear from sub-section (2) that an assessee who is eligible to claim deduction u/s 80-IA has the option to choose the initial/ first year from which it may desire the claim of deduction for ten consecutive years, out of a slab of fifteen (or twenty) years, as prescribed under that sub-section. It is hereby clarified that once such initial assessment year has been opted for by the assessee, he shall be entitled to claim deduction u/s 80-IA for ten consecutive years beginning from the year in respect of which he has exercised such option subject to the fulfilment of conditions prescribed in the section. Hence, the term 'initial assessment*

year' would mean the first year opted for by the assessee for claiming deduction u/s 80-IA. However, the total number of years for claiming deduction should not transgress the prescribed slab of fifteen or twenty years, as the case may be and the period of claim should be availed in continuity.

The Assessing Officers are, therefore, directed to allow deduction u/s 80-IA in accordance with this clarification and after being satisfied that all the prescribed conditions applicable in a particular case are duly satisfied. Pending litigation on allowability of deduction u/s 80 IA shall also not be pursued to the extent it relates to interpreting 'initial assessment year' as mentioned in sub-section (5) of that section for which the Standing Counsels/D.R.s be suitably instructed.

The above be brought to the notice of all Assessing Officers concerned.'

6.The questions of law that arise for determination for AY 2003-04 are as follows:

'1.Whether the Appellate Tribunal is right in law in disallowing the claim of deduction in the sum of Rs.30,34,531/- pertaining to the cost of raw gas supplied by M/s.Madras Fertilizers Ltd. claimed as a deduction on the basis of the invoices raised by the supplier of gas calculated on the basis of flow meters installed in the premises of the appellant/assessee while computing the profit in terms of section 28 of 44B of the Income Tax Act?

2.Whether the Tribunal is correct in sustaining the disallowance of claim of deduction relating to the differential purchase cost of raw gas even though the method of accounting had justified the booking of the said differential purchase cost as an 'ascertained/actual liability' in the year of purchase namely, the Assessment Year under consideration as against the year of resolution of *the dispute with reference to the quantity of raw gas supplied taking place subsequent to the year of account?'*

7. The assessee was engaged in the business of manufacture of carbon dioxide and dry ice and had, for that purpose purchased raw gas from Madras Fertilizers Limited (MFL). A dispute had arisen on the method of quantification of the purchases. The method of quantification followed for more than two decades was based on the clearance of bottles on which excise duty had been remitted. With respect from 10.10.2021 the method of quantification had been amended and MFL had commenced raising invoices on the basis of flow meters.

8. A dispute was raised by the appellant who found this method of quantification unacceptable. It had hence, and admittedly, not settled the bills for the raw gas supplied by MFL. Though invoices had been raised by MFL, they have admittedly not been settled by the appellant who had made a provision in its books. The claim of the appellant based on the provision came to be disallowed by the assessing officer on the ground that the provision represented a contingent, unascertained liability.

9. In appeal, the Commissioner of Income Tax (Appeal) accepted the case of the appellant on the basis of his finding that *'Even in the face of non-agreement between the appellant and M/s.MFL, there is no*

ambiguity about the fact that the appellant had incurred the additional liability of Rs.30,34,521/-.'

10. Clearly and admittedly, the above finding is erroneous on facts, as the appellant has not incurred any liability per se and had only made a provision in its accounts. The quantification/crystallisation of the liability is yet to be undertaken and the parties, are stated to be at loggerheads over the issue. We are thus of the view that the impugned order of the Tribunal dated 31.12.2008 reversing the order of the Commissioner of Income Tax (Appeals) and restoring the order of the assessing authority contains no infirmity.

11.The substantial questions of law in this regard are answered against the assessee and in favour of the revenue.

12. Both the tax case appeals are dismissed. No costs.

[A.S.M., J]   [G.A.M., J]
18.11.2024

Index:Yes/No
Speaking order
Neutral Citation:Yes
vs

To

1.The Assistant Commissioner of Income Tax
Company Circle VI(3),
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