



W.A.No.2462 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 03.10.2024

Delivered on: 21.02.2025

CORAM
THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

W.A.No.2462 of 2024
and CMP.No.17595 of 2024

Pharmazell (India) Pvt. Ltd.

Represented by A Uthorised Signatory Mr. Karthik N

Manager (Finance and Accounts)

Plot No. B5, B6, MEPZ

Tambaram- 600045.

....Appellant

.Vs.

1. Assistant Commissioner of Income Tax

Circle 1 Large Tax Payers Unit,

NO.121, Mahatma Gandhi Road, Nungambakkam,
Chennai.

2. Principal Commissioner of Income Tax 4

NO.121, Mahatma Gandhi Road, Nungambakkam,
Chennai.



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3. Additional/Joint/Deputy/Assitant Commisioner of
Income Tax/ Income- tax Officer,
National Faceless Assessment Centre
Delhi

...Respondents

Prayer: _____ Writ Appeal filed under clause 15 of the Letters Patent, to set aside
the order dated 26.09.2023 passed by this Hon'ble Court in W.P.No.8014 of 2022

For Appellant : Mr.N.V.Balaji

For Respondents : Mr.V.Mahalingam, Senior Standing Counsel

J U D G M E N T

This Writ Appeal is filed challenging the order of this Court dated 26.09.2023 passed by the learned Single Judge in W.P.No.8014 of 2022, dismissing the Writ Petition filed by the Appellant herein viz., assessee.

2. The appellant has filed the above said writ petition challenging the impugned notice issued by the first respondent under Section 148 of the Income Tax Act, 1961(herein after referred to as 'the Act') dated 30.03.2021 for the Assessment Year 2014-15 along with the impugned order disposing off the



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objections of the Appellant/petitioner dated 15.02.2022 for the Assessment Year
WEB 2014-15 passed by the third respondent.

3. The appellant company is engaged in manufacturing and selling of Active Pharmaceutical Ingredients (APIs), amino acids and their intermediates, primarily to the customers in the International markets. The appellant company is assessed to income tax under the jurisdiction of the First Respondent. During the previous year, relevant to the assessment year 2013-2014, the appellant had issued credit notes aggregating to Rs.11,96,04,791/- and claimed the same amount as deduction in the original return of income filed by it. Subsequently, the Authorized Dealer(AD) namely Indian Bank accepted the reduction in the invoice value of exports vide letter dated 26.12.2013 allowing the setoff of Rs.5,41,29,351/- for the AY 2013-14 and the remaining amount of Rs.6,57,63,274/- was allowed as setoff for the AY 2014-15 as against Rs.11,98,92,625/-.

4. The appellant revised its return of income for the AY 2013-2014 on 15.12.2014 offering an additional income of Rs.6,54,75,440/- to the income under



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the heading "Computation of Income" from "Business or profession" and thus

restricted the deduction to Rs.5,41,29,351/- for the Ay 2013-14.

5. The appellant filed its original return of income during the previous year, relevant to the impugned AY 2014-15 dated 29.11.2014 returning a total income of Rs.21,06,88,820/-. In the said impugned AY 2014-15, the appellant claimed the differential amount of Rs.6,54,75,440/- as deduction.

6. Further the appellant had also communicated the reason for revising the return of income for AY 2013-14 to the first Respondent vide letter dated 07.07.2015. The case of the appellant was selected for a scrutiny assessment and first respondent after considering the submissions made by the appellant, completed the assessment vide order dated 17.10.2018 without making any adjustments in respect of credit note deduction. Thereafter, the first respondent issued the impugned Notice dated 30.03.2021 under Section 148 of the Act alleging that the income of the Appellant had escaped.

7. While so, for the above said Impugned notice, the appellant sought



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reasons recorded for reopening the assessment. The first Respondent vide letter dated 19.08.2021 furnished the reasons recorded. For which the appellant filed its detailed objections vide its letter dated 20.09.2021. In turn the third respondent disposed off the objections filed by the appellant vide impugned order dated 15.02.2022. .

8. Aggrieved over the impugned order dated 15.02.2022 and Impugned notice u/s 148 dated 30.03.2021, the appellant filed W.P.No.8014 of 2022 before this court.

9. The Writ Court on appreciation of rival submissions, held that the Assessing Officer cannot be faulted while reopening the Assessment and overruled the objection of the appellant. Accordingly, the writ court, by order dated 26.09.2023, dismissed the writ petition holding explanation to Section 147 of the Income Tax Act, 1961 makes it clear that filing of information is not sufficient. As against the said order, the appellant filed the present writ appeal.

10. Mr.N.V.Balaji, learned counsel for the appellant submitted that the first



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respondent has no jurisdiction to initiate the reopening proceedings beyond four

years from the end of the relevant Assessment Year [hereinafter called as “AY”]

and hence the entire re-assessment proceedings are barred by limitation.

11. The learned counsel further submitted that the writ court failed to appreciate the essential conditions of section 147, namely "escapement of income" was not satisfied in the current fact pattern. Section 147 of the Act clearly brings out that no notice under the said section can be issued after the expiry of four years from the end of the relevant AY unless there is a failure on the part of the assessee to comply with the provision of the Section 139 or 142(1) or 148 or there is failure on the part of the assessee to disclose fully and truly all material facts which are necessary for the assessment.

12. The learned counsel for the appellant would point out that in the present case, the complete facts with respect to the reduction in invoice value of the export sales and the corresponding credit as part of the head 'other income,' which is the subject matter of reassessment for the AY 2014-15 was explained to the first respondent – Assistant Commissioner of Income Tax, by not just one

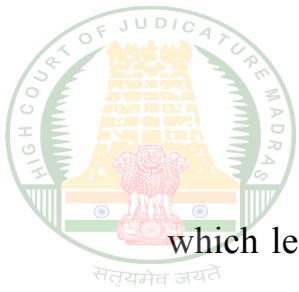


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submission but three specific submissions dated 25.08. 2016, 23.09.2016 as well as 01.11.2016 during the course of the original assessment proceedings conducted as per the provisions of section 143(2) of the Act.

13. The learned counsel for the appellant would further submit that since the complete facts and materials were available before the First Respondent-Assistant Commissioner of Income Tax, it is evident that the submissions of the Appellant were thoroughly considered before passing the final assessment order for the subject year. However, the observation of the Learned Judge before the writ court is that the appellant had merely produced materials and the same did not give true picture is incorrect.

14. The learned counsel for the appellant submits that the basis on which reopening of the assessment proceedings carried on is for the reasons provided by the Second Respondent-Principal Commissioner of Income tax which is merely the financial statements of the subject AY and the same were duly made available by the Appellant during the course of assessment proceedings for such year. Hence, there is no failure on the part of the Appellant to disclose any material fact



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which led to reopening of assessment after expiry of 4 years from the end of the

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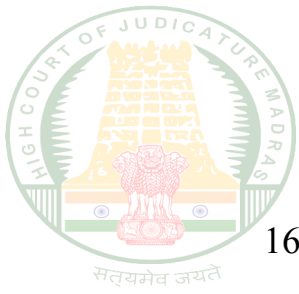
subject AY. Therefore, the learned Judge , Writ Court, has erroneously mentioned that the Appellant in the financial statements for FY 2013-14 has claimed the deduction twice.

15. The counsel for the appellant also submitted that reopening could not have been made by the first respondent, merely based on the change of the opinion. In this connection the learned counsel relied on the judgment of the Hon'ble Kerala High Court in ***DCIT vs Pala Marketing Co-operative Society Ltd- (2000) 243 ITR 499***. The learned counsel had also relied on the following judgments to reiterate his submission that reopening is without jurisdiction.

a) CIT vs Kelvinator of India (2010) 2 SCC 723.

b) Seshasayee Paper & Boards Ltd vs Union of India [2021] 128 taxmann.com 293 (Madras).

c) ITO vs Tech Span India P Ltd [2018] 404 ITR 10 (SC).



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16. Mr.V.Mahalingam, learned Standing Counsel appearing for the respondents/Income Tax department submitted that the appellant filed the original return of income for the AY 2014-15 on 29.11.2024 admitting a total income of Rs.21,06,88,820/-. The assessment was completed u/s 143(3) of the Act on 17.10.2018 determining the total income of Rs.51,31,60,867/-. Later the assessment was reopened on 30.03.2021 by issue of notice u/s.148 of the Act. The reason for reopening was furnished to the assessee on 19.08.2021 and the appellant filed the objection against the reasons recorded for the reopening of assessment on 20.09.2021. The Assessing Officer disposed of the objections on 15.02.2022.

17. The Writ Court, had rightly held that claim for deduction for a sum of Rs.6,57,63,274 based on the letter dated 26.12.2013 of the Authorised dealer and for a further sum of Rs.6,54,75,440/- in the same AY 2014-15 is impermissible.

18. The learned Standing counsel further submitted that subsequent to the order passed in Writ Petition, the Assessing officer took up the reassessment proceedings and completed on 10.01.2024 and has decided the issue in Para



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No.10 to 14 which is extracted below:

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"10. Assessee's contention and position was found untenable as it is on record that net effect of credit note amounting to Rs. 11,96,04,791/- i.e. totaling of Rs.5,41,29,351/- and Rs.6,54,75,440/- was already reduced from the invoice of A.Y 2013-14 itself and that in the Financial Statement dated 18.09.2014, for the Financial Year 2013-14, in the Balance Sheet, Profit and Loss Account, Cash Flow Statement and Notes of Financial Statement for year ended March 31,2014, the petitioner has claimed deduction twice.

11. Therefore, assessee was showed cause as to why its deduction of Rs. 6,54,75,440/- shall not be disallowed.

12. Assessee failed to submit any reply on or before date of compliance. Therefore, it was granted another opportunity vide letter dated 26.12.2023 keeping principles of natural justice in mind and a suo moto VC was also scheduled for 27.12.2023 and conducted.

12.1. In its reply dated 28-12-2023, assessee submitted that it had not received show cause notice on 20-12-2023. This allegation stands rejected as delivery status on registered email-ids of the assessee is on record.

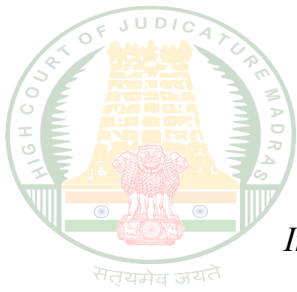


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12.2.Further, assessee raised contention with respect to time provided vide the SCN. Same also stands rejected as assessee was later given a suo moto letter and VC for compliance on 27-12-2023, thus making total time available with assessee to explain its position regarding SCN dated 20-12-2023 as 7 days.

*12.3.In its written reply (signed reply was resubmitted on 02-01-2024), assessee has failed to explain the observations made by the Honorable Madras High Court that it had claimed double deduction in AY 14-15. **Assessee has failed to establish that the amount under consideration was offered as other income in AY 2014-15 as there is no detailed bifurcation of other income of Rs.7,31,66,598/-on record.** Further, the Note 33 relied upon by the assessee also fails to provide the required bifurcation and hence its claim that after reduction of credit note from the sales, the same was offered as other income stands rejected. Therefore, it is clear that assessee has firstly deducted Rs.6,54,75,440/- from sales and then also claimed deduction of Rs. 6,54,75,440/- as part of any other amount allowable as deduction. Thus, assessee has claimed double deduction and addition of Rs. 6,54,75,440/- is being made. Penalty proceedings under section 271(1)(c) of the*



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WEB COPY *Income Tax Act, 1961 is being initiated separately for furnishing inaccurate particulars of its income.*

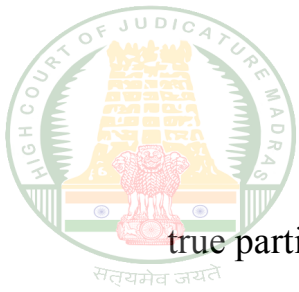
(Addition of Rs.6,54,75,440/-)

13. Final computation of taxable income:

14. Assessed u/s 147 r.w.s 144B of the Income Tax Act, 1961 at an income of Rs.28,016,89,625/-, Penalty proceedings under section 271(1)(c) of the Income Tax Act 1961 are being initiated separately. Issue necessary forms i.e.ITNS, Demand notice and Challan etc."

In view of the above, the counsel for the respondents-Income Tax department humbly submit that the Revenue has conclusively proved that the Appellant-Assessee has made a double claim which is not permissible and that the Appellant- Assessee has made a wrong claim and has also not furnished full and true disclosure at the time of original assessment proceedings.

19. Therefore, the learned counsel for the respondents submitted that the proviso to section 147 of the Act clearly will not come to the rescue of the Appellant-Assessee in view of the fact that the Assessee has not furnished full and



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true particulars which are necessary for making the assessment.

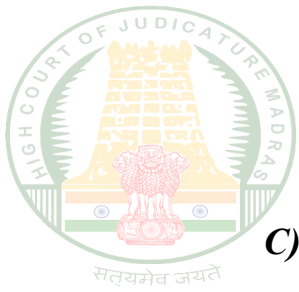
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20. The learned Standing counsel would further point out that the Assessing Officer has correctly reopened the assessment and the Writ Court in the Writ Petition filed by the assessee, has correctly upheld the action of the Assessing Officer. Consequent to the reopened assessment order passed by the Assessing Officer on 10.1.2024, the assessee has filed the appeal before the Commissioner of Income Tax [Appeals] on 12.02.2024. Since the assessee has availed the alternate remedy, the assessee may not be permitted to continue the Writ Proceedings. The learned Standing counsel thus prayed for dismissal of the Writ appeal.

21. The learned Standing counsel for the Respondent-Income Tax Department, to substantiate the case of the Revenue, had relied upon the following precedents:

A). Pool Chand Bajrang Lal V ITO [1993] 69 Taxman 627/2013 ITR 456 (SC).

B). Sri Krishna (P.) Ltd V. ITO [1996] 87 Taxman 315/221 ITR 538 (SC).



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C). *Johnson Products (P.) Ltd. V Assistant Commissioner of Income-tax, Circle, New Delhi [2017] 88 taxmann.com 317 (Delhi).*

D). *Sword Global India (P) Ltd V. Assistant Commissioner of Income-tax, Co. Circle VI(4), [2015] 60 taxmann.com 73 (Madras).*

E). *Akshat Pramodkumar Chaudhary V Deputy Commisioner of Income-tax [2023] 153 taxmann.com 25 (Gujarat).*

F). *Shrikant Phulcgand Bhakkad (HUF) V. Joint Commissioner of Income-tax [2022] 137 taxmann.com 445 (Bombay).*

G). *Kerala Financial Corporation V Joint Commisioner of Income-tax [2009] 308 ITR 434 (Kerala).*

H). *Bright Star Syntex (P.) Ltd. V Income-tax Officer [2016] 71 taxmann.com 64 (Bombay).*

13. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

14. The issue involved herein is that the appellant has claimed the deduction of Rs.6,54,75,440 twice. According to the Revenue, such double

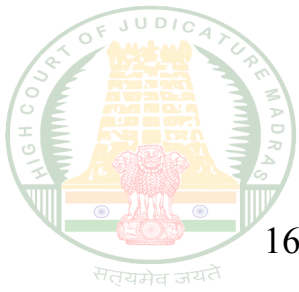


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deduction is impermissible. It is clear that the appellant/assessee could not prove

it is not a double claim before the Assessing Officer or before the learned Single Judge. Having carefully examined the reasons stated in the reopening of the assessment proceedings by the Assessing Officer, in the present case, this court is of the view that the said reasons are relevant and material for the reopening of the assessment. Therefore, it is clear that assessee has firstly deducted Rs.6,54,75,440/- from sales and then also claimed deduction of Rs.6,54,75,440/- as part of any other amount allowable as deduction. Thus, assessee has claimed double deduction and addition of Rs.6,54,75,440/- is being made. The writ court also has given clear findings to that effect and we agree to the said view.

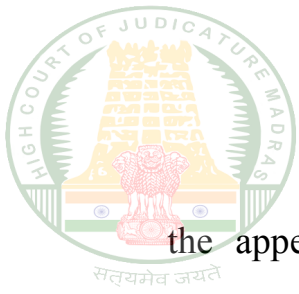
15. The appellant/assessee has made a wrong claim and has also not furnished full and true disclosure at the time of original assessment proceedings. Even though the proceedings taken are beyond the period, the Assessing officer satisfied that there was a double deduction and the failure on the part of the assessee to make a proper return and disclose fully and truly all material facts necessary for reopening of the assessment.



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16. In the present case, it is the duty of the assessee to place all the materials fully and truly which are necessary for the purpose of grant of relief. In the event of failure on the part of the assessee to disclose fully and truly all material facts by placing necessary account books and other evidence, it is open to the Assessing Officer to assume jurisdiction to initiate assessment proceedings. The Assessing Officer found that it was false claim and in such view, after the completion of four years from the end of the assessment year, in which the assessment was made under Section 143(3) of the Act earlier, the Assessing Officer has correctly reopened the assessment and the learned Single Judge has correctly upheld the action of the Assessing Officer.

17. Further, the appellant/assessee filed appeal before the Commissioner of Income Tax (Appeals) as against the impugned assessment proceedings. As such, the appellant who filed writ petition under Article 226 and having exercised such remedy and faced dismissal order, filed alternate remedy, on the self same issues. The appellant can very well go into the matter in depth before the Commissioner of Income Tax (Appeals) on the merits of reopening under Section 147 of the Act. Therefore, we do not find any force in the contention of the learned counsel for



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the appellant that it is not a double claim. The assessee having furnished incomplete details and which has been comes to notice of the Assessing Officer, the Assessee has no case, therefore, we have no hesitation in dismissing the present writ appeal.

18. In the result, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B.,J.]

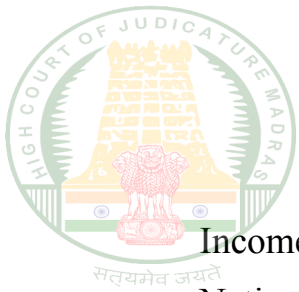
[R.K.M.,J.]

21.02.2025

nvsri

To

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Circle 1 Large Tax Payers Unit,
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2. Principal Commisioner of Income Tax 4
NO.121, Mahatma Gandhi Road, Nungambakkam,
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3. Additional/Joint/Deputy/Assitant Commisioner of



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Income Tax/ Income- tax Officer,
National Faceless Assessment Centre
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J. NISHA BANU, J.

and
R.KALAIMATHI, J.

nvsri

Judgment in

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21.02.2025