

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5555-5556 OF 2005

COMMNR. OF INCOME (CENTRAL), LUDHIANA

Appellant (s)

VERSUS

M/S. MAX INDIA LTD.

Respondent(s)

(With office report)

Date: 01/11/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Mr. Vikas Singh,ASG.
Mr. Ranbir Chandra,Sr.Adv.
Dr. R.G.Padia,Sr.Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. Ajay Vohra,Adv.
Ms. Kavita Jha,Adv.
Mr. Bhargava V. Desai,Adv.
Mr. Sandeep S.Karnail,Adv.
Mr. Rahul Gupta,Adv.

UPON hearing counsel the Court made the following
ORDER

Civil appeals filed by the Department stand dismissed.
No order as to costs.

[SUMAN WADHWA] [MADHU SAXENA]
COURT MASTER COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5555-5556 OF 2005

COMMNR. OF INCOME TAX, (CENTRAL)
LUDHIANA .. APPELLANT

vs.

M/S. MAX INDIA LTD. .. RESPONDENT

ORDER

In our view at the relevant time two views were possible
on the word "profits" in the proviso to Section 80 HHC (3). It is

true that vide 2005 Amendment the law has been clarified with retrospective effect by insertion of the word "loss" in the new proviso. We express no opinion on the scope of the said amendment of 2005. Suffice it to state that in this particular case when the Order of the Commissioner was passed under Section 263 of the Income Tax Act two views on the said word "profits" existed. In our view the matter is squarely covered by the judgment of this

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Court in the case of Malabar Industrial Company Ltd. vs. Commissioner of Income Tax reported in (2000) 243 ITR 83; as also by the judgment of the Calcutta High Court in the case of 109 ITR 229 at 243.

At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Company Limited this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under Sec. 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the

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Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income Tax Officer is unsustainable in law.

According to the learned Additional Solicitor General on interpretation of the provision of Sec.80 HHC (3) as it then stood the view taken by the Assessing Officer was unsustainable in law and therefore the Commissioner was right in invoking Sec. 263 of the Income Tax Act. In this connection he has further submitted that in fact 2005 amendment which is clarificatory and retrospective in nature itself indicates that the view taken by the

Assessing Officer at the relevant time was unsustainable in law.

We find no merit in the said contentions. Firstly it is not in dispute when the Order of the Commissioner was passed there were

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two views on the word 'profit' in that Section. The problem with Section 80 HHC is that it has been amended eleven times. Different views existed on the day when the Commissioner passed the above order. Moreover the mechanics of the Section have become so complicated over the years that two views were inherently possible. Therefore, subsequent amendment in 2005 even though retrospective will not attract the provision of Section 263 particularly when as stated above we have to take into account the position of law as it stood on the date when the Commissioner passed the order dated 5.3.1997 in purported exercise of his powers under Section 263 of the Income Tax Act.

For above reasons civil appeals filed by the Department stand dismissed.

No order as to costs.

(S.H. KAPADIA)

.....J.

.....J.
(B.SUDERSHAN REDDY)

NEW DELHI;
November 1, 2007.