Chief Justice's Court **AFR**

Case :- INCOME TAX APPEAL No. - 207 of 2014

Appellant :- Commissioner Of Income Tax Kanpur
Respondent :- M/S Vacment India Agra
Counsel for Appellant :- Shambhu Chopra

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice
Hon'ble Pradeep Kumar Singh Baghel,J.

The appeal by the Revenue under Section 260A of the Income Tax Act, 1961 arises from an order of the Income Tax Appellate Tribunal dated 22 May 2014. The assessment year to which the appeal relates is AY 2011-12.

The Revenue has formulated the following question of law in support of the appeal:

> "Whether the Hon'ble ITAT has erred in law as well as in the facts and circumstances of the case in allowing the calculation of tax in violation of the provisions of the relevant Finance Act which prescribe calculation of tax as inclusive of cess and surcharge."

In the present case, the assessee filed an appeal before the Commissioner (Appeals) against an order that was passed under Section 143 (1) read with Section 154 of the Act by the ACIT-Centralized Processing Centre (CPC), Bangalore, by which a demand of Rs.10,92,766.00 was raised on the assessee. The following grounds of appeal were raised before the Commissioner (Appeals):

> "1. Because the rectification application filed under Section 154 of the I.T. Act before CPC, Bangalore has been wrongly and illegally rejected.
>
> 2. Because surcharge and education cess on the tax payable has been calculated before allowing credit of tax

> paid in the earlier years under Section 115JAA which is apparently wrong and hence, ACIT (CPC) has erred on facts and as well as on law in rejecting the application filed under Section 154 of the I.T. Act.
>
> 3. Because without prejudice to the above mentioned grounds, if the credit of tax paid under Section 115JAA is to be allowed after charging surcharge and education cess, then the credit which has been allowed of the taxes paid in the earlier year should also be inclusive of surcharge and education cess."

The Commissioner (Appeals) allowed the appeal filed by the assessee by an order dated 18 October 2013 and directed the Assessing Officer to compute the gross tax liability on the assessee in accordance with the method of computation provided in ITR-6 for the assessment year 2011-12. The Tribunal has dismissed the appeal filed by the Revenue by its order dated 22 May 2014.

The only question which is raised pertains to the computation of tax in accordance with the modalities which are prescribed in the relevant form, ITR-6. Insofar as is material, the relevant entries in the form (Part B-TTI) are as follows:

3	Gross tax payable (enter higher of 2c and 1)	3
4	Credit under section 115JAA of tax paid in earlier years (if 2c is more than 1) *(7 of Schedule MATC)*	4
5	Tax payable after credit under section 115JAA [(3-4)]	5
6	Surcharge on 5	6
7	Education cess, including secondary and higher education cess on (5+6)	7
8	Gross tax liability (5+6+7)	8

The aforesaid entries leave no manner of ambiguity in regard to the method of computation of tax liability. Entry 3 requires computation of the gross tax payable.

Under entry 4, credit is required to be given under Section 115JAA of the Act of the tax paid in earlier years. Entry 5 requires a computation of the tax payable after credit under Section 115JAA of the Act. The matter is placed beyond doubt by the parenthesis, which indicates that tax payable under entry 5 is to be arrived at by deducting the credit under Section 115JAA of the Act (under entry 3) from the gross tax payable (under entry 4). The surcharge is computed on the amount reflected in entry 5.

The Tribunal has noted that from the next assessment year, AY 2012-13, the position was materially altered, but in the present case, since the dispute related to AY 2011-12, the method of computation, as directed by the Commissioner (Appeals), was plainly in accordance with the methodology as provided in ITR-6. The Tribunal in confirming the order of the Commissioner (Appeals) has, hence, not committed any error. The appeal will not give rise to any substantial question of law and is, accordingly, dismissed.

There shall be no order as to costs.

Order Date :- 29.10.2014
RKK/-

(P.K.S. Baghel, J)   (Dr. D.Y. Chandrachud, CJ)