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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) INCOME TAX APPEAL No. 38 of 2004

MARLBOROUGH POLYCHM LTD
V/S
C I T JODHPUR

(2) INCOME TAX APPEAL No. 04580 of 2004

MALBOROUGH POLYCHEM LTD
V/S
C I T JODHPUR

Mr. Sanjeev Johari, for the appellant.

Mr. K.K.Bissa, for the respondent.

Date of Order : 15.2.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

BY THE COURT (PER HON'BLE GUPTA, J.)

Heard learned counsel for the parties.

The appeal being D.B. Income Tax Appeal No.38/2004 has been filed by the same assessee, challenging the order of the ITAT dated 19.11.03, dismissing the assessee's appeal and upholding the order, rejecting the application of the assessee for rectification of the mistake. This appeal was admitted on 29.09.2004, by framing following substantial

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questions of law:

"1. Whether the Assessing Officer in exercise of his jurisdiction under Section 143(1)(a) of the Act could have disallowed the claim laid by assessee to deduction under Sec. 80HH and 80I which involved a debatable question on which the difference of opinion exist?

2. Whether adjustment in the income returned by the assessee of the aforesaid claim to deduction amounted to mistake apparent on the face of record which the Tribunal was bound to rectify on the application being made?"

The assessee filed the application under Section 254 (2), pointing out certain mistakes in the order of the Bench. That application has been dismissed.

There is yet another appeal, attached with this file being D.B. Income Tax Appeal No.4580/2004 DR(J), which has been filed against the order of the learned ITAT dated 04.06.03, passed in ITA No.64/JDPR/98, though, by this order, three appeals were decided, two appeals of the assessee, being ITA Nos.64 and 65/JDPR/98, and one appeal of the Revenue, being ITA No.114/JDPR/98. This Appeal No.4580/2004 has reported by the Registry as barred by 310 days.

However, since the arguments were advanced by either side, not on the aspect of rectification of the mistake,

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but on the aspect of sustainability of the addition, made by the Assessing Officer, while making assessment under Section 143(1)(a), obviously, the Appeal No.38/2004 cannot be said to be having any force, nor the two questions framed, can be said to be arising in this appeal. This appeal, therefore, is dismissed as such. And since the arguments have been advanced, as noticed above, on the merits in the Appeal No.4580/2004 DR(J), instead of standing on ceremonies, the delay in filing the appeal is condoned, and this appeal is heard on the two substantial questions of law, as framed in Appeal No.38/2004.

Initially, the submission made was, that while making assessment under Section 143(1)(a), it is not open to the Assessing Officer to make any addition, without taking recourse to the procedure provided under Section 143(3) and 143(2). However, after reading of the language of Section 143(1)(a), including its proviso, as it then existed, this contention was not continued, and was given up, and rightly. Then it was contended that while making assessment under Section 143(1)(a), it was not open to the Assessing Officer to make additions with respect to the deductions claimed by the assessee under Section 80HH and 80I in the return, as the question, as to whether the assessee was entitled to claim the deduction, or not, was a debatable/controversial issue, and therefore, if at all the Assessing Officer wanted to make additions, recourse was

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required to be had to the procedure provided under Section 143(3) and 143(2). The Authorities below have negatived this contention, mainly on the ground, that the controversy had already been settled by this Court (Rajasthan High Court) in the case of C.I.T. Vs. Loonkar Tools Pvt. Ltd., reported in 127 CTR 77 and (1995) 213 I.T.R. 721, and therefore, it cannot be said, that at the time when the return was filed, the issue was at all a debatable issue. It has also been considered by the learned Tribunal, in Para 13 of its order, that the return of income was filed by the assessee in the present case on 29.11.94, while the judgment of the Rajasthan High Court in the case of Loonkar Tools Pvt. Ltd (supra) was delivered on 21.7.94. Thus, it was much before the date of filing of the return by the assessee, that the law had been settled. This factual aspect has been discussed by the learned Tribunal while negating the contention of the assessee, to the effect, that subsequent event cannot be made the ground for making addition under Section 143(1)(a), the argument perhaps meaning, that since in Loonkar Tools' case it had been held that the deduction is not admissible, which is a subsequent event, on the basis of which the Assessing Officer has disallowed the deduction.

It is contended by learned counsel for the assessee, that the judgment in Loonkar Tools Pvt. Ltd's case (supra), of-course was rendered in July 1994, but then, it was

published in the two journals in the year 1995 only, and therefore, for the assessee, as on the date of filing of the return, the question was very much a debatable question, and therefore, the assessee had claimed deductions, which deduction could not be declined by making addition, more so, so as to attract the additional liability of tax.

Learned counsel for the Revenue, on the other hand, has supported the impugned judgment.

Learned counsel for the assessee cited few judgments on, the aspect, that the admissibility of deduction under Section 80HH and 80I was a debatable question, in view of conflicting judgments of the other High Courts, couple of judgments have been cited, to the effect, that the effect of rendering the judgment of the Hon'ble Supreme Court (or the High Court in the present case) may have the effect of bringing to an end the debate, but does not have the effect of obliterating the existence of debate on the question.

So far as the judgments cited are concerned, most of the judgments cited are of a time, later than the date of filing of the return, and there is only one judgment of Orrisa High Court, in Commissioner of Income-Tax Vs. Tarun Udyog, reported in (1991) 191 ITR 688. However, this aspect need not detain us any more, as undisputedly, it was

in the month of July 94 that the Rajasthan High Court had decided the controversy in Loonkar Tools Pvt. Ltd's case (supra) and, therefore, so far as the judgment of the Rajasthan High Court is concerned, it no more remains a debatable issue.

In that view of the matter, the precise question, then arise is, as to whether the assessee is entitled to claim the issue to be a debatable issue, notwithstanding the judgment having been rendered by this Court in July, 1994, on the ground, that either that judgment was not reported in the Journals before the date of filing of the return, or that, the assessee did not otherwise come to know about the judgment, before filing of the return?

In our view, no such right can be conceded to the assessee to claim the issue to be surviving, as a debatable issue, notwithstanding the fact, that the issue has been settled by the judgment of this Court. It is a different story, that to support this proposition in favour of the assessee, the learned counsel for the assessee could not invited our attention to any of the judgment of any other High Court, or of Hon'ble the Supreme Court. In our view, accepting the interpretation sought to be propounded by the assessee, would have not only far reaching effects, rather will bring about chaotic effects, inasmuch as, it will open flood gates for every assessee, to plead ignorance of the

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judgment of this Court, or of the Hon'ble Supreme Court. The judgment becomes operative on the date, it is pronounced, and any efficacy of the judgment is not dependent on its publication, or it's being noticed by the public at large.

The net result of the aforesaid discussion is, that it cannot be said, that as on the date of filing of the return, the issue was at all any debatable issue, so as to disentitle the Assessing Officer to make any addition on that count, while making assessment under Section 143(1) (a). Thus, the question No.1 is required to be, and is, answered in favour of the Revenue, and against the assessee. Then, obviously, as a necessary corollary, the question No.2 is also answered in favour of the Revenue and against the assessee.

Both the appeals are, therefore, dismissed accordingly.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

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