

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 11TH FEBRUARY 2008 / 22ND MAGHA 1929

ITA.No. 45 of 2002()

ITA.797/COCH/1992 of I.T.A.TRIBUNAL,COCHIN BENCH
.....

APPELLANT

THE COMMISSIONER OF INCOME TAX,
CALICUT.

BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENTS:

THE MATHRUBHUMI PRINTING &
PUBLISHING CO LTD., CALICUT.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 11/02/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Dated this the 11th day of February, 2008

C.R.

JUDGMENT

C.N. Ramachandran Nair,J.

The question raised in the departmental appeal filed under Section 260A of the Income Tax Act is whether the Tribunal is justified in cancelling the rectification order issued by the assessing officer under Section 154 of the Act withdrawing relief granted in the original assessment under Section 32A of the Act. We have heard senior counsel appearing for the appellant and counsel appearing for the respondent-assessee.

2. The assessee made a claim of investment allowance on investment in plant and machinery under Section 32A of the Act, besides claiming relief under Section 32AB on investment deposit account for the same assessment year. In the original assessment completed the assessing officer allowed deduction of both the claims. However, later the assessing officer found that Section 32A(8B) prohibits granting of investment allowance to assessee who have claimed deduction allowable under Section 32AB. Since respondent-assessee had claimed deduction under Section 32AB and in fact claim

was allowed, the assessing officer found that granting of deduction of investment allowance is impermissible under Section 32A(8B) of the Act. Consequently, he rectified the assessment withdrawing relief granted under Section 32A of the Act. On appeal by the assessee, the first appellate authority held that only one claim is allowable, that is under Section 32A. He allowed the claim under Section 32A and held that assessee is not entitled simultaneously to claim deduction under Section 32AB of the Act. The first appellate authority relied on Section 32A(8C) of the Act for granting the relief moulded by him. While the department filed appeal against the order of the first appellate authority, the assessee filed cross-objections on the ground that proceedings under Section 154 was not maintainable. The Tribunal dismissed the departmental appeal and allowed the assessee's cross-objections by holding that Section 154 of the Act was not applicable in this case, as there was no mistake apparent that could be corrected under Section 154 of the Act. It is against this order of the Tribunal that the Department has filed appeal before this Court.

3. Standing counsel contended that there was patent mistake in the original assessment in as much as the assessing officer allowed the claim of deduction under Section 32A as well as under Section 32AB

which is not permissible by virtue of the provisions contained in Section 32A(8B) of the Act. He also referred to the finding of the first appellate authority which also upheld the proceedings under Section 154 of the Act, even though the first appellate authority wrongly moulded the relief to the assessee. We are inclined to uphold the contention of the revenue because the first appellate authority allowed the claim by relying on sub-section (8C) of Section 32A which came into effect only on 1.4.1989 whereas the assessment involved in this case is 1988-89. In fact the very same provisions contained in sub-section (8C) of Section 32A are simultaneously incorporated with effect from 1.4.1989 in clause (10) of Section 32AB. There is no need for us to consider the scope of these provisions introduced with effect from 1.4.1989 because those provisions of the Act are not applicable for the assessment in question. The scope of sub-section (8B) of Section 32A is that if in the course of assessment, the assessing officer notices that the assessee has claimed deduction under Section 32AB for the same year, there is no need to process the claim under Section 32A but to reject the claim of deduction of investment allowance. If relief is granted contrary to the statutory provision then such order is a mistaken order and assessing officer is entitled to rectify such order in

proceedings under Section 154 of the Act. The Tribunal interfered with the order under Section 154 by assuming that the view taken by the first appellate authority is also possible. Since we have already held that the first appellate authority's order based on the provision not applicable for assessment year is not tenable, the view adopted by the first appellate authority is not a possible view. Therefore the Tribunal's assumption that two views are possible on the entitlement of deduction is wrong. In this view of the matter, we allow the appeal filed by the revenue by cancelling the order of the Tribunal and that of the first appellate authority and by restoring the order issued by the assessing officer under Section 154 of the Act.

(C.N.RAMACHANDRAN NAIR)
Judge.

(T.R.RAMACHANDRAN NAIR)
Judge.

