

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Judgment Reserved On 07.01.2021	Judgment Pronounced On 19.01.2021
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T.C.A.No.451 of 2018

S.P.Spining Mills Pvt. Ltd.,
1/147/104, Cuddalore Main Road,
Kariapatti, Salem-636 106.
[PAN: AACCS 9500J]

.. Appellant

-VS-

Asst. Commissioner of Income Tax,
Circle – 1(3), 3 Gandhi Road,
Salem-636 007.

.. Respondent

Appeal under Section 260A of the Income Tax, 1961 against the order dated 24.03.2017 made in I.T.A.No.2845/Mds/2016 on the file of the Income Tax Appellate Tribunal Bench 'C', Chennai for the assessment year 2011-12.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Ms.V.Pushpa,
Senior Standing Counsel

JUDGMENT

T.S.Sivagnanam, J.

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) is directed against the order dated 24.03.2017, passed by the Income Tax Appellate Tribunal Bench 'C', Chennai (for brevity “the Tribunal”), in I.T.A.No.2845/Mds/2016 for the assessment year 2011-12.

2.The appeal is entertained on the following substantial questions of law:-

“(i).Whether on the facts and in the circumstances of the case the Tribunal is correct in law in its interpretation of Section 14A of the Income Tax Act, 1961 and read with Rule 8D of the IT Rules, 1962 relating to the disallowance of expenses in the absence of exempt income?

(ii).Whether the Tribunal is right in law in

holding that the disallowance u/s.14A should be made even though no expenditure has been incurred relating to the exempt income?

(iii).Whether the Tribunal is right in law in holding that the notional interest disallowance made by the Assessing Officer is correct u/s.36(1)(iii) of the Income Tax Act, 1961? and

4.Whether that Tribunal is right in law in holding that upon the interpretation of 80IA the carbon credit is not eligible for deduction?”

3.The assessee, a private limited company, filed its return of income for the assessment under consideration (AY 2011-12) on 30.09.2011, admitting a total income of Rs.8,16,93,770/- under normal computation and book profit of Rs.10,26,72,726/- under Section 115JB of the Act. Subsequently, the assessee filed revised return on 29.09.2012, admitting an income of Rs.7,85,96,160/- under normal computation and book profit of Rs.10,26,72,726/- under Section 115JB of the Act. The return was processed under Section 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice dated 28.09.2012, was issued under Section 143(2) of the Act.

4. During the scrutiny assessment, the issues, which were discussed with the assessee, were whether the deduction claimed by the assessee under Section 80IA of the Act to the tune of Rs.3,17,77,767/- was in respect of the revenue generated for adhering to the clean development mechanism; the second issue was with regard to interest disallowance; and the third issue was with regard to the disallowance under Section 14A of the Act.

5. With regard to the first issue, the Assessing Officer held that the assessee is engaged in the generation of electrical power, which is used for its own textile business and the remaining is wheeled to the Tamil Nadu Electricity Board. The income from generation of electricity and the carbon credit earned by the assessee are totally separate and the source of the income is also separate. Therefore, the income derived from the generation of electrical power alone can be construed as income from the eligible business for the purpose of deduction under Section 80IA of the Act. Therefore, the assessee is not entitled for deduction under Section 80IA of the Act in respect of the carbon credit.

6. With regard to the second issue, the Assessing Officer held that the assessee, having provided interest free loans to subsidiary companies and obtained cash credits from two companies, had diverted the business loan for non-business purpose and proportionate disallowance of interest at 12% was calculated and added back to the income of the assessee.

7. With regard to the disallowance under Section 14A of the Act, the Assessing Officer observed that from the balance sheet, it is seen that the assessee had invested a sum of Rs.9 Crores in the subsidiary companies and it had not claimed any expenditure. Therefore, he was satisfied that the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rule, 1962 (hereinafter referred to as “the Rules”) have to be applied and accordingly, worked out the same.

8. On the above terms, the assessment was completed by order dated 10.03.2014 under Section 143(3) of the Act. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals), Salem (for brevity “the CIT(A”).

9. With regard to the carbon credit, the assessee contended that without prejudice to their claim for deduction under Section 80IA, the carbon credit revenue is to be held as a capital receipt and ought to have been excluded from the taxable income.

10. With regard to the interest disallowance, the assessee contended that their current year profit was Rs.7,52,37,357/- and free reserves was Rs.35,81,22,243/- and there was no necessity to divert the cash credit borrowings for making interest free loans to the subsidiary companies.

11. With regard to the disallowance under Section 14A of the Act, the assessee contended that the Assessing Officer mechanically resorted to the disallowance in a routine manner merely because, the assessee had invested in the subsidiary companies. Further, it was contended that the Assessing Officer failed to note that the assessee never incurred any expenditure directly or indirectly during the year, which was relatable to the investments. Further, no dividend or any income was earned during the year from such

investment in the subsidiary companies. The CIT(A), by order dated 29.07.2016, dismissed the appeal.

12.With regard to the disallowance of proportionate interest, the CIT(A) relied upon a decision of the Hyderabad Tribunal in the case of ***M/s.Suryavamshi Holding Ltd., Secunderabad vs. DCIT, Circle 3(2), Hyderabad [I.T.A.No.1175/H/2009]*** and held that disallowance of interest at 12% was justified.

13.With regard to the deduction under Section 14A of the Act, after extracting Section 14A of the Act, the CIT(A) held that the disallowance made by the Assessing Officer was justified.

14.With regard to the disallowance on the deduction under Section 80IA of the Act, the CIT(A) noted the decision of the Chennai Tribunal relied on by the assessee in the case of ***Ambica Cotton Mills Ltd., vs. DCIT [I.T.A.No.1836/Mds/2012, dated 16.04.2013]***, wherein it was held that carbon credit receipts cannot be considered as business income and it is a

capital receipt. Hence, the assessee's claim under Section 80IA of the Act is untenable, as deduction under Section 80IA of the Act is allowable only on profits and gains derived by an undertaking.

15. Aggrieved by such order, the assessee preferred appeal before the Tribunal. With regard to the disallowance of interest under Section 36(1)(iii) of the Act, the Tribunal remanded the matter to the Assessing Officer to decide the matter afresh on merits.

16. With regard to the disallowance under Section 14A of the Act, the Tribunal referred to the disallowance of interest expenditure under Section 36(1)(iii) of the Act and did not deal with the contention advanced by the assessee with regard to the deduction under Section 14A of the Act and in particular, the contention of the assessee that such disallowance cannot be done in a routine manner and that the assessee had never incurred any expenditure directly or indirectly during the year when the investments were made.

17. On a reading of the impugned order, more particularly in paragraph 6, we are unable to decipher as to how the Tribunal had concluded the issue. We may point out that the Tribunal has not dealt with the issue with regard to the correctness of the disallowance under Section 14A of the Act.

18. With regard to the claim for deduction under Section 80IA of the Act, the Tribunal took note of the submission made by the assessee, the decisions relied on and confirmed the finding of the CIT(A) largely on the ground that the assessee themselves regarded it as a business income and claimed deduction under Section 80IA of the Act.

19. We may point out that the Tribunal did not consider the specific aspect, which was focused by the assessee before the CIT(A) that the carbon credit received has been held to be capital receipt and thus, ought to have been excluded from the taxable income. Challenging the correctness of the order passed by the Tribunal, the assessee is before us.

20.We have elaborately heard Mr.V.S.Jayakumar, learned counsel for the appellant/assessee and Ms.V.Pushpa, learned Senior Standing Counsel for the respondent/Revenue.

21.As noticed above, with regard to the disallowance under Section 36(1)(iii), the Tribunal had remanded the matter to the Assessing Officer for fresh consideration and on such remission, the Assessing Officer has allowed the relief on the ground that the assessee has adequate interest free funds to advance amounts to sister concerns. In the light of the same, the learned counsel for the assessee submits that the assessee does not press for a decision on substantial question of law no.3.

22.The said submission is placed on record and it is held that it is not necessary for the this Court to decide substantial question of law no.3, as relief has already been granted to the assessee.

23.With regard to substantial question of law nos.1 and 2, they are both interlinked, as they pertain to the correctness of disallowance under Section 14A of the Act.

24.In the narrative portion of this judgment, we noted that the Tribunal while deciding the issue under Section 14A of the Act, largely was guided by the provisions of Section 36(1)(iii) of the Act, on which, already a decision was taken by the Tribunal and the Tribunal thought fit to remand the matter to the Assessing Officer. The assessee has contended that the equity investment made by the assessee in its subsidiary company was made during the financial years 1997-98 to 2006-07 and no investments were made during the year under consideration and hence, there is no interest advance at all in the year of account.

25.Further, with regard to the equity investment in another subsidiary company, it is submitted that it was made during the financial year 2010-11 and the investment was made out of the profits earned during the year and with free cash reserves without any borrowals by way of overdraft funds

from banks. Further, the assessee from the very first instance has been contending that they have not incurred any expenditure for the investment in the assessee's subsidiary companies and there was no income earned by way of dividend as well as received by the assessee from its subsidiary and therefore, the disallowance of any expenditure, that too, on notional basis is illegal.

26. On a perusal of the order passed by the Tribunal as well as the CIT(A), we find that this issue has not been adjudicated in the manner, in which, it is required to be done. The Tribunal, while remanding the issue with regard to interest disallowance under Section 36(1)(iii) of the Act, ought to have remanded the issue with regard to disallowance under Section 14A of the Act as well. But, however failed to do so and therefore, we are of the view that this issue needs to be remanded back to the Assessing Officer for fresh consideration. Accordingly, the finding rendered by the Tribunal with regard to the disallowance under Section 14A of the Act is set aside and the matter is remanded to the Assessing Officer for fresh consideration.

27.In the result, substantial question of law nos.1 and 2 are left open.

28.Insofar as substantial question of law no.4 is concerned, it deals with carbon credit. The question, as to the manner in which carbon credit receipt has to be treated, has been considered by several High Courts and it has been held that the receipt should be treated as a capital receipt. In this regard, it would be beneficial to refer to the decision in the case of ***CIT vs. Subhash Kabini Power Corporation Ltd., [(2016) 385 ITR 0592 (Karn.)]***. In the said decision, the Karnataka High Court approved the view taken by the ITAT, Hyderabad Bench, which decision was upheld by the High Court of Andhra Pradesh in the case of ***CIT vs. My Home Power Ltd. [(2014) 365 ITR 0082 (AP)]***, which was subsequently followed by the ITAT, Chennai and Jaipur Benches. The operative portion of the judgment reads as follows:-

“11. The decision has been upheld by the Hon’ble Andhra Pradesh High Court. This decision has been subsequently followed by the ITAT Chennai and Jaipur Benches. There is no decision either from the Hon’ble Supreme Court or from the Hon’ble jurisdictional High Court. These decisions indicate that sale of carbon credit

would result capital receipt which is not taxable. When we confronted the learned DR with regard to this position, it was contended that the position as on the day when the assessment order was passed, is to be seen and on that day these orders were not available. Therefore, the assessee cannot claim the benefit of these orders. However, we do not concur with this proposition of the learned CIT, because the Full Bench of the Hon'ble Punjab & Haryana High Court in the case of Aruna Luthra reported in 254 ITR 76 has held that a Court decide a dispute between the parties. The case can involve decision on facts. It can also involve a decision on point of law. Both may have bearing on the ultimate result of the case. When a Court interprets a provision, it decides as to what is the meaning and effect of the words used by the Legislature, it is the declaration regarding the statute. In other words the judgment declares as to what the legislature had said at the time of promulgation of the law, the declaration is....., this was the law, this is the law, this is how the provision shall be construed. Therefore, he cannot plead that the view taken by the Tribunal and upheld by the Hon'ble Andhra Pradesh High Court could be considered as if applicable from the date of the decision. In the decision only the position of the law as to how receipts from sale of carbon credits are to be treated, has been explained. One of the argument raised by

the DR was that at this stage, the additional ground ought not to be permitted to be raised. It is pertinent to mention here that basically, it is not a separate ground, it is a limb of arguments, which is affecting the ultimate tax liability of the assessee. The Hon'ble Supreme Court in the case of NTPC Ltd (Supra) has held that the Tribunal had jurisdiction to examine a question of law which arose from the fact as found by the Income Tax authorities and having a bearing on the tax liability of the assessee. As far as the nature of the receipt from sale of carbon credit is concerned, it is available from the assessment stage. It is not disputed even by the learned Commissioner, the dispute is, whether it has been derived from the eligible industrial undertaking for qualifying the grant of deduction u/s 80IA. The learned Commissioner felt that this receipt has not been derived from the industrial undertaking which will be eligible for grant of deduction u/s 80IA and the Assessing Officer committed an error in including the receipt in the eligible profit. Those facts are already on the record. It is to be seen, whether the receipt is of capital nature or of a revenue nature. Even in case the order of the CIT is upheld, then, in law, it will affect the computation of income, ultimately because the receipt will not be taxable, it will not come under the ambit of computation of income. Simultaneously it will be excluded from the deduction u/s

80IA as well as of the total income. The result will remain as it is. It is a revenue neutral case. Therefore, in view of the ratio laid down by the Hon'ble jurisdictional High Court in the case of Gopala Gowda (Supra), the second condition for taking action u/s 263 does not exist. The assessment order is not prejudicial to the interests of the Revenue. In view of the above discussion, we allow the appeal of the assessee and quash the impugned order of the learned CIT passed u/s 263 of the Income Tax Act."

The aforesaid shows that, so far as the question as to whether, the income by sale of carbon credit could be termed as capital receipt or profit, is concerned, the Tribunal has considered the decision of the Hyderabad Bench and it has further taken note of the fact that decision of the Tribunal of Hyderabad Bench was carried before the Andhra Pradesh High Court and the said decision was not interfered with. The Tribunal, in its decision has also referred to the decision of the Apex Court with regard to power under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") of the revisional authority.

4. In our view, the principal question, which may arise is, as to whether by sale of carbon credit capital receipt is generated or a profit out of the business activity of the assessee. More or less, in a similar case, the Apex

Court had an occasion to consider such an issue in the case of Commissioner of Income Tax v. Maheshwari Devi Jute Mills Ltd. [(1965) 57 ITR 36 (SC)], wherein the question came up for consideration before the Apex Court as to whether by sale of loom-hours, the amount received could be termed as capital receipt or the income out of business. In the said decision, the Apex Court held that the amount received out of sale of loom-hours can be termed as capital receipt and not income out of business.

5. Subsequently, in a later decision of the Apex Court, a question came up for consideration in the case of M/s. Empire Jute Co. Ltd. v. Commissioner of Income Tax [(1980) 4 SCC 25] the question which arose before the Apex Court was, if loom-hours are purchased by the manufacturing mills, whether it can be termed as capital expenditure or revenue expenditure. In the said decision, the earlier decision of the Apex Court in the case of Maheshwari Devi Jute Mills (supra) was also relied upon by the Revenue and after considering the same, the Apex Court at paragraph Nos. 4 and 5 observed thus:

“4. Now an expenditure incurred by an assessee can qualify for deduction under Section 10(2) (xv) only if it is incurred wholly and exclusively for the purpose of his business, but even if it fulfils this requirement, it is not enough; it must further be of revenue as distinguished from

capital nature. Here in the present case it was not contended on behalf of the Revenue that the sum of Rs. 2,03,255 was not laid out wholly and exclusively for the purpose of the assessee's business but the only argument was and this argument found favour with the High Court, that it represented capital expenditure and was hence not deductible under Section 10(2) (xv). The sole question which therefore arises for determination in the appeal is whether the sum of Rs. 2,03,255 paid by the assessee represented capital expenditure or revenue expenditure. We shall have to examine this question on principle but before we do so, we must refer to the decision of this Court in Maheshwari Devi Jute Mills case since that is the decision which weighed heavily with the High Court, in fact, compelled it to negative the claim of the assessee and hold the expenditure to be on capital account. That was a converse case where the question was whether an amount received by the assessee for sale of loom hours was in the nature of capital receipt or revenue receipt. The view taken by this Court was that it was in the nature of capital receipt and hence not taxable. It was contended on behalf of the Revenue, relying on this decision, that just as the amount realised for sale of loom hours was held to be capital receipt, so also the amount paid for purchase of loom hours must be held to be of capital nature. But this argument

suffers from a double fallacy.

5. In the first place it is not a universally true proposition that what may be capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer. It was felicitously pointed out by Macnaghten, J. in Racecourse Betting Control Board v. Wild that a “payment may be a revenue payment from the point of view of the payer and a capital payment from the point of view of the receiver and vice versa”. Therefore, the decision in Maheshwari Devi Jute Mills case cannot be regarded as an authority for the proposition that payment made by an assessee for purchase of loom hours would be capital expenditure. Whether it is capital expenditure or revenue expenditure would have to be determined having regard to the nature of the transaction and other relevant factors.”

Thereafter, the Apex Court while considering the test to find out as to whether a particular expenditure can be termed as capital or revenue expenditure observed at paragraph Nos. 8 and 9 as under:

“8. The decided cases have, from time to time, evolved various tests for distinguishing between capital and

*revenue expenditure but no test is paramount or conclusive. There is no all embracing formula which can provide a ready solution to the problem; no touchstone has been devised. Every case has to be decided on its own facts keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the courts may be referred to as they might help to arrive at a correct decision of the controversy between the parties. One celebrated test is that laid down by Lord Cave, L.C., in *Atherion v. British Insulated and Halsby Cables Ltd.* where the learned law Lord stated:*

When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital.

*This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion and, as pointed out by Lord Radcliffe in *Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd.*, it would be misleading to suppose that in all cases, securing a benefit for the business would be prima facie capital expenditure “so long as the benefit is not so*

transitory as to have no endurance at all". There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature, acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is therefore not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. But even if this test were applied in the present case, it does not yield a conclusion in favour of the Revenue. Here, by purchase of loom hours no new asset has been created. There is no addition to or expansion of the profit-making apparatus of the assessee. The income-earning machine remains what it

was prior to the purchase of loom hours. The assessee is merely enabled to operate the profit-making structure for a longer number of hours. And this advantage is clearly not of an enduring nature. It is limited in its duration to six months and, moreover, the additional working hours per week transferred to the assessee have to be utilised during the week and cannot be carried forward to the next week. It is, therefore, not possible to say that any advantage of enduring benefit in the capital field was acquired by the assessee in purchasing loom hours and the test of enduring benefit cannot help the Revenue.

9. Another test which is often applied is the one based on distinction between fixed and circulating capital. This test was applied by Lord Haldane in the leading case of John Smith & Son v. Moore where the learned law Lord drew the distinction between fixed capital and circulation capital in words which have almost acquired the status of a definition.

He said:

Fixed capital (is) what the owner turns to profit by keeping it in his own possession; circulating capital (is) what he makes profit of by parting with it and letting it change masters.

Now so long as the expenditure in question can be clearly referred to the acquisition of an asset which falls

within one or the other of these two categories, such a test would be a critical one. But this test also sometimes break down because there are many forms of expenditure which do not fall easily within these two categories and not infrequently, as pointed out by Lord Radcliffe in Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd., the line of demarcation is difficult to draw and leads to subtle distinctions between profit that is made “out of” assets and profit that is made “upon” assets or “with” assets. Moreover, there may be cases where expenditure, though referable to or in connection with fixed capital, is nevertheless allowable as revenue expenditure. An illustrative example would be of expenditure incurred in preserving or maintaining capital assets. This test is therefore clearly not one of universal application. But even if we were to apply this test, it would not be possible to characterise the amount paid for purchase of loom hours as capital expenditure, because acquisition of additional loom hours does not add at all to the fixed capital of the assessee. The permanent structure of which the income is to be the produce or fruit remains the same; it is not enlarged. We are not sure whether loom hours can be regarded as part of circulating capital like labour, raw material, power etc., but it is clear beyond doubt that they are not part of fixed capital and hence even the application of this test does not

compel the conclusion that the payment for purchase of loom hours was in the nature of capital expenditure.”

After making the aforesaid observation, at paragraph No. 10, the Apex Court, on the basis of the facts of the said case concluded as under:

“Similarly, if payment has to be made for securing additional power every week, such payment would also be part of the cost of operating the profit-making structure and hence in the nature of revenue expenditure, even though the effect of acquiring additional power would be to augment the productivity of the profit-making structure. On the same analogy payment made for purchase of loom hours which would enable the assessee to operate the profit-making structure for a longer number of hours than those permitted under the working time agreement would also be part of the cost of performing the income-earning operations and hence revenue in character.”

Accordingly, the payment made for purchase of loom-hours by Jute Mill Company was held to be Revenue expenditure.

6. At this stage, we may also refer to the decision of the Andhra Pradesh High Court, which has been relied upon by the Tribunal in the impugned order. More or less, identical question was raised and the Andhra Pradesh High Court in the case of Commissioner of Income Tax-IV v. My

Home Power Ltd. [(2014) 46 Taxmann.com 314 (Andhra Pradesh), at paragraph No. 3 observed thus:

“3. We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that “Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns.

“We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal.”

The aforesaid shows that the Andhra Pradesh High Court has confirmed the view of the Tribunal that Carbon Credit is not an offshoot of business, but an offshoot of environmental concerns. No asset is generated in the course of business, but it is generated due to environmental concerns. It was also found that the carbon credit is not even directly linked with the power generation and the income is received by sale of the excess carbon credits. It was found that the Tribunal has rightly held that it is capital

receipt and not business income.

7. As such, in our view, when the issue is already covered by the decision of the Andhra Pradesh High Court, wherein the view taken by the Tribunal of Hyderabad Bench has been followed in the present case, one may say that no substantial question of law would arise for consideration.”

29.The Hon'ble Division Bench of this Court in the case of **PCIT vs. Arun Textiles Pvt. Ltd.**, [T.C.A.No.606 of 2016, dated 29.08.2016], after referring to the decision in **My Home Power Ltd.**, (supra), dismissed the appeal filed by the Revenue and confirmed the order passed by the ITAT holding that sale of carbon credits has to be considered as capital receipt and accordingly, it is not taxable.

30.The argument of Ms.V.Pushpa, learned Senior Standing Counsel is by referring to the substantial questions of law framed by the assessee and it is submitted that if the receipts from sale of carbon credit has to be treated as a capital receipt, then the assessee could not have claimed it as a deduction under Section 80IA of the Act and if the substantial question of law as framed by the assessee is to be answered, it should be answered against the assessee.

31. In our considered view, there is a slightly different approach that needs to be adopted, as this Court exercises power under Section 260A of the Act, while deciding the substantial question of law. The assessee is required to place all materials before the Assessing Officer and make a full and true disclosure of their entire financial. If any query is raised by the Assessing Officer, the assessee is bound to answer. Thereafter, it is the Assessing Officer, who has to apply the law and complete the assessment. It has been held that it is not for the assessee to assist the Assessing Officer to complete the assessment in a particular manner or to supply a draft assessment order to the Assessing Officer. At this juncture, it is beneficial to refer to the decision in the case of *CIT vs. India Express (Madurai) Pvt. Ltd.*, [(1983) 104 ITR 705 (Madras)]. The reference to the High Court was to decide the scope of the appellate jurisdiction of the Income Tax Tribunal.

32. The Hon'ble Division Bench refers to three decisions of the Hon'ble Supreme Court in the case of *Hukumchand Mills Ltd. vs. CIT* [(1967) 63 ITR 232 (SC)]; *CIT vs. Mahalakshmi Textile Mills Ltd.*, [(1967) 66 ITR

710]; and *CIT vs. Nelliappan [(1967) 66 ITR 722 (SC)]* wherein, the observations made by the Hon'ble Supreme Court were referred to, which are quoted hereunder:-

"In hearing an appeal, the Tribunal may give leave to the assessee to urge grounds not set forth in the memorandum of appeal, and in deciding the appeal the Tribunal is not restricted to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal. The Tribunal was, therefore, competent to allow the assessee to raise the contention relating to the cash credits which was not made the subject-matter of a ground in the memorandum of appeal. It cannot be said that in accepting the contention of the assessee that the cash credits represented income from the business withheld from the books, the Tribunal made out a new case inconsistent with the assessee's own plea. In any event, the Tribunal is not precluded from adjusting the tax liability of the assessee in the light of its findings merely because the findings are inconsistent with the case pleaded by the assessee."

33.In ***Mahalakshmi Textile Mill's*** case, it was held as hereunder:-

*“Under sub-s. (4) of s. 33 of the **Indian Income-tax Act**, 1922, the Appellate Tribunal is competent to pass such orders on the appeal "as it thinks fit". There is nothing in the **Income-tax Act** which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal. If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him.”*

34.After referring to the above decisions, it was pointed out that the Appellate Tribunal is competent to pass such orders on the appeal, as it thinks fit and it would be the duty of the Tribunal to decide all questions on fact and law before it, even though it was not raised by the departmental

authorities. After referring to the powers of the Tribunal and that of this Court and the Hon'ble Supreme Court, it was pointed out that based on the cardinal principle, which has been incorporated as a veritable constitutional provision, that no tax can be levied or collected save under authority of law.

35.It was further pointed out that the task of an Appellate Authority under the taxing statute, especially a non-departmental authority like the Tribunal, is to address its mind to the factual and legal basis of an assessment for the purpose of properly adjusting the taxpayer's liability to make it accord with the legal provisions governing his assessment. Since be-all and end-all of the statutory provisions, especially those relating to the administration and management of income tax is to ascertain the taxpayer's liability correctly to the last pie, if it were possible, the various provisions relating to Appeal, Second Appeal, Reference and the like can hardly be equated to a lis or dispute as arises between two parties in a civil litigation.

36.It was further pointed out that although the income-tax statute makes the Department or its officers figure as parties in the appeal

proceedings, they are not in the strict sense what are called by American writers as parties to adversary proceedings. This is so because, the very object of the appeal is not to decide a point raised as a dispute, but any point which goes into the adjustment of the taxpayer's liability. In that sense, a view prevails, even in England, that the authorities sitting in an appeal in tax case, cannot be regarded as deciding a lis, but they are only engaged in an administrative act of adjusting the taxpayer's liability.

37.Further, it was pointed out that under our fiscal jurisprudence, we may regard the Appellate Authorities as exercising quasi-judicial functions in the same sense, as a tax officer does. But, even so, the proceedings before them lack the basic elements of adversary proceedings. It, therefore, follows that the discussion and the scope of the appellate jurisdiction of the Tribunal and the other authorities under the tax code cannot be pursued by drawing a parallel to civil litigation with particular reference to appeal from decrees, and the like. Further, it was pointed out that in the case of ***Mahalakshmi Textile Mills Ltd.***, the Hon'ble Supreme Court observed that the Tribunal is not precluded from “adjusting the tax liabilities” of the assessee in the light

of its findings merely because, the findings are inconsistent with the case pleaded by the assessee. The decision of the Hon'ble Full Bench of this Court in the case of *State of Tamil Nadu vs. Arulmurugan & Co., [(1982) 51 STC 381]* was referred to wherein, it was held that the Appellate Authorities perform precisely the same functions, as the assessing authority. The above decision and the findings rendered are a clear answer to the arguments raised before us by the Revenue contending that substantial question of law no.4, as framed has to be decided against the assessee. We, thus, have no hesitation to hold that the Tribunal failed to exercise its power in a proper prospective as a final fact finding authority and examining as to whether there is any adjustment required to be made in the assessee's tax liability *qua* the various decisions of the Court, which have held that receipt on account of sale of carbon credit is capital in nature.

38.In the instant case, the assessee while preferring appeal before the CIT(A), has specifically raised a contention that the receipts from sale of carbon credit is a capital receipt and cannot be included in the taxable income. Though this ground raised by the assessee before the CIT(A) has

been recorded in the order, the CIT(A) did not take a decision on the same. Similar ground was raised by the assessee before the Tribunal, which was not considered by the Tribunal, though the Tribunal refers to all the decisions relied on by the assessee, but would pin the assessee to his claim made under Section 80IA of the Act and accordingly, negatives it. This finding of the Tribunal is wholly erroneous and perverse. The Tribunal was expected to apply the law and take a decision in the matter and if the CIT(A) or the Assessing Officer had failed to apply the law, then the Tribunal was bound to apply the law. This is so because, in the light of the decisions referred above, the receipt by way of sale of carbon credit has been held to be capital receipt. Therefore, it is of a little consequence as to the claim made by the assessee under Section 80IA of the Act or in other words, the question of taking a decision as to whether the deduction is admissible under Section 80IA of the Act is a non-issue. If the receipt from the sale of carbon credit is a capital receipt, then it will go out of the purview of the gross total income as defined under Section 80B(5) of the Act, which expression is found in Section 80IA of the Act. Thus, if the receipts by sale of carbon credit will not fall within the definition of total income, the same cannot be

included under Section 80IA of the Act. Therefore, even if the assessee has made such a claim, that cannot be a reason for the Tribunal to non-suit the assessee.

39. One more important factor to be noted is that Section 115BBG of the Act was introduced by Finance Act, 2017 with effect from 01.04.2018, prior to which, there was no such provision and Mr.V.S.Jayakumar, learned counsel for the assessee would submit that the assessee was under utter confusion as to under which provision of the Act, they should make a claim for deduction and having left with no other option, had been making the claim under Section 80IA of the Act and merely because the assessee due to uncertainty in the legal position, had made a claim under Section 80IA of the Act that cannot be a reason to deny a benefit granted in favour of the assessee. The submission, made by Mr.V.S.Jayakumar, learned counsel for the appellant, in this regard, is well found and accepted.

40. For the above reasons, substantial question of law no.4 is answered in favour of the assessee.

41.In the result, the tax case appeal is allowed to the extent indicated hereinbelow:-

(i) Substantial question of law nos.1 and 2 are left open and the issue with regard to the disallowance under Section 14A of the Act read with Rule 8D of the Rules is remanded to the Assessing Officer for fresh decision on merits and in accordance with law, after opportunity to the assessee;

(ii) Substantial question of law no.3 is not pressed by the assessee, as pursuant to the order of remand passed by the Tribunal, the Assessing Officer has allowed the relief to the assessee. Accordingly, this question is not required to be answered; and

(iii) For the reasons assigned in the preceding paragraphs, substantial question of law no.4 is answered in favour of the assessee. No costs.

(T.S.S., J.) (R.N.M., J.)
19.01.2021

Index: Yes/ No

Speaking Order : Yes/ No

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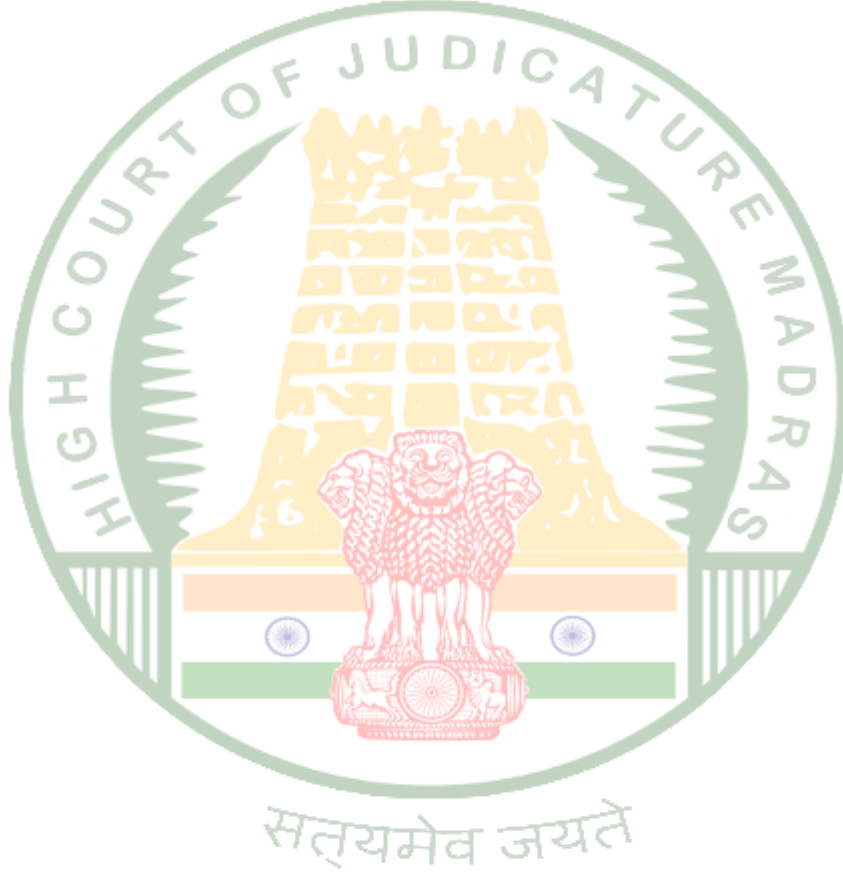
- 1.The Asst. Commissioner of Income Tax,
Circle – 1(3), 3 Gandhi Road,
Salem-636 007.
- 2.The Income Tax Appellate Tribunal Bench 'C', Chennai.



T.S.Sivagnanam, J.
and
R.N.Manjula, J.

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