

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

T.C.(Appeal) No.450 of 2007

M/s.Agasthiya Granite P Ltd,
229, Trichy Road,
Ondipudur, Coimbatore-641 016. ... Appellant

Vs.

The Assistant Commissioner of Income Tax
Company I(1)
Coimbatore-641 018. Respondent

Appeal filed under Section 260A of Income Tax Act, 1961,
against the order dated 28.04.2006 passed by the Income Tax
Appellate Tribunal, Madras "D" Bench, Chennai, in I.T.A.No.2305
(Mds)/2004 for the assessment year 2001-02.

Preferred against the order passed by the Commissioner of
Income Come Tax - I, Coimbatore dated 19.07.2004 in Proceedings
No.C.No.120(3)/2004-05/CBE/CIT/-I Against the proceedings of the
Deputy Commissioner of Income tax, company Circle - I(1),
Coimbatore dated 29.12.2002 in PAN NO.AABCA78185.

For Appellant : Mr.S.Sriraman

For Respondent : सत्यमेव जयते Mr.T.R.Senthil Kumar

J U D G M E N T
(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.S.Sriraman, learned counsel for the
appellant/assessee and Mr.T.R.Senthil Kumar, learned counsel for
the respondent/Revenue.

2. This Tax Case (Appeal) has been admitted on the following substantial questions of law:

"i. Whether the Tribunal is correct in confirming the order of the Commissioner of Income-tax passed in terms of Section 263 of the Act without considering the grounds challenging the assumption of jurisdiction to pass the said revision order?

ii. Whether the Tribunal is correct in concluding that the provisions of Section 80 HHC (4B) of the Act would mandate exclusion of the deduction allowed under Section 80 IB of the Act while quantifying the deduction under Section 80 HHC of the Act?

iii. Whether the Tribunal is correct in coming to the conclusion that the decision rendered by the Co-ordinate Bench under identical circumstances would not be applicable to the present case in view of non-consideration of the scope of Section 80 HHC (4B) of the Act in the said decision even though the provisions of Sections 80 IB and 80 HHC of the Act are mutually exclusive and even though the deduction claimed under the said sections had not exceeded the gross total income?"

3. This case came up before us for hearing on 10.04.2018, and it was brought to the notice of this Court by the learned counsel for the Revenue that identical issue raised in this tax case appeal has been referred for consideration before the Hon'ble Full Bench. Therefore, we directed the Registry to put up the order of reference. Accordingly, when the case is heard today, we had the benefit of going through the order of reference and the order passed by the Hon'ble Full Bench, dated 01.07.2011.

4. The Hon'ble Full Bench took note of the fact that there were two conflicting decisions viz., [2008] 304 ITR 319 (SCM Creations vs. Assistant Commissioner of Income-Tax) and [2009] 315 ITR 400 (General Optics (Asia) Ltd., vs. Deputy Commissioner of Income-tax) and found that identical issue is pending in appeal before the Hon'ble Apex Court in Special Leave Petition in C.C.9649/2010 dated 16.07.2010 has been admitted in the case of C.I.T.-I, Chennai vs. M.R.F. LTD., Chennai. In the light of the same, the Full Bench reference was directed to be adjourned and await the result of the appeal pending before the Hon'ble Apex Court.

5. Learned counsel for the Revenue has produced the case information details from the Registry of the Hon'ble Supreme Court to show that the matter is still pending before the Hon'ble Supreme Court.

6. Be that as it may, the first question of law we are required to consider is whether the Tribunal is correct in confirming the order passed by the Commissioner of Income-tax passed in terms of Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") without considering the grounds challenging the assumption of jurisdiction to pass the revision order.

7. Question nos.2 and 3 are on the claim for deduction under Sections 80 HHC (4B) and 80 IB of the Act, which should await the decision of the Hon'ble Supreme Court in terms of the orders passed by the Hon'ble Full Bench. However, in the instant case, the first question of law to be considered is whether the Commissioner of Income-tax could have exercised the powers under Section 263 of the Act. The primordial requirement for exercising such a power has been explained by the Hon'ble Supreme Court in CIT vs. Max India Ltd. reported in (2007) 295 ITR 282 (SC). It was pointed out that the phrase "prejudicial to the interest of the Revenue" under Section 263 has to be in conjunction with the expression "erroneous" order passed by the assessing officer.

8. It was further pointed out that 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. The Hon'ble Supreme Court, by way of illustration, pointed out that 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 Commissioner of Income Tax 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. The fact that the two views existed is evident from the order of reference passed by the Hon'ble Full Bench quoted above. Therefore, the Commissioner of Income Tax could not have invoked the power under Section 263 of the Act, as the income tax officer had adopted one of the two views possible.

9. Admittedly, the order of assessment was passed on 29.12.2002, much prior to the decision in SCM Creations (supra), which was rendered in the year 2008, and the decision in the case of General Optics (Asia) Ltd. (supra), which was rendered in the year 2009. The assessing officer interpreted the provisions and passed the order of assessment. The view taken by the assessing officer is clearly supported by the decision of the High Court of Madhya Pradesh in the case of J.P.Tobacco Products (P) Ltd., vs. Commissioner of Income Tax reported in (1998) 229 ITR 0123 and the decision of the Bombay High Court in the case of Commissioner of Income Tax vs. Nima Specific Family Trust reported in (2001) 248 ITR 0029.

10. In J.P.Tobacco Products (P) Ltd. (supra), it was held that for the purpose of computing relief, relief granted under Section 80 HH cannot be deducted from the gross total income.

11. In Nima Specific Family Trust (supra), it was held that Section 80HH(9), only talks about priority and does not refer to quantum of deduction as was the case under Section 80J (1); where assessee is entitled to deduction under Section 80HH as well as Section 80-I, deduction of 20 per cent of same profits has to be allowed first under Section 80HH and then a further deduction of 20 percent of same profits has to be allowed under Section 80-I subject to overall limit under Section 80A(2).

12. Thus, we are convinced that the view taken by the assessing officer was a plausible view. If it results in loss of Revenue, it cannot be treated as prejudicial to the interest of Revenue for the purpose of invoking the power under Section 263 of the Act.

13. Thus, for the above reasons, we answer question no.1 as framed above in favour of the assessee and against the Revenue and allow the appeal in part. Question nos.2 and 3 are left open. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Registrar, Income Tax Appellate Tribunal,
Madras "D" Bench, Chennai.

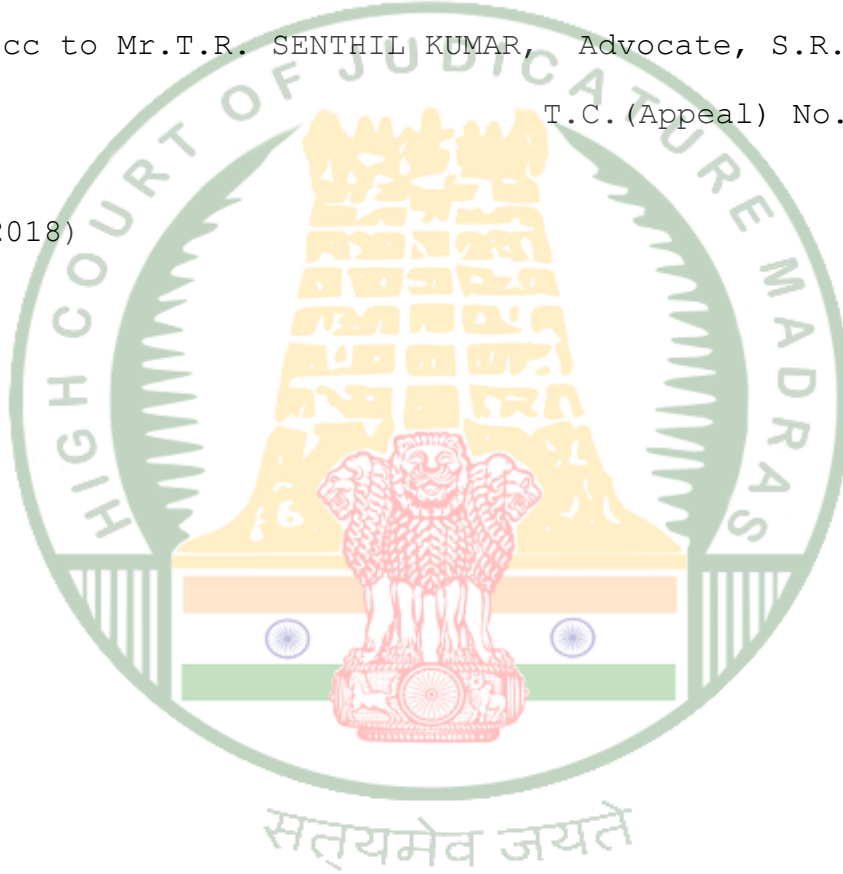
2.The Commissioner of Income-tax (Appeals)-I,
Coimbatore.

3. The Deputy Commissiioner of Income Tax Company Circle (1),
Coimbatore.

+lcc to Mr.T.R. SENTHIL KUMAR, Advocate, S.R.No. 28498

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GMI (CO)
TR(27/04/2018)



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