

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2135 OF 2007

Dinosaur Steels Ltd.

... Appellant(s)

Versus

Joint Commissioner of Income Tax
...Respondent(s)

O R D E R

This civil appeal is filed by the assessee. It pertains to assessment year 1997-98.

Assessee is an industrial undertaking. It is engaged in the manufacture of steel products. It commenced business during assessment year 1995-96. It is entitled to deduction under Section 80IA.

For the assessment year 1997-98, a Return of income was filed disclosing an income of Rs. 3,31,188.00. The total income declared by the assessee was Rs. 34,92,096.87 on which amount a deduction under Section 80IA at 30% amounting to Rs. 10,47,629.00 was claimed. On the balance of Rs. 24,44,467.87, a sum of Rs. 21,13,280.00 was adjusted being carry forward losses of earlier assessment years. The said Return was processed under section 143(1)(a) of the Income Tax Act, 1961 ("the Act"). An intimation was accordingly sent to the assessee determining the taxable income at Rs. 3,31,190.00.

Subsequently, the AO issued a notice under Section 154 of the Act calling for objections on the ground that there was a mistake in the Assessment Order, namely, the claim of deduction under Section 80IA had been allowed inadvertently before setting off the earlier years losses from the profits and gains of the industrial undertaking. The assessee objected to the proposal of restricting its claim under Section 80IA by placing reliance on the judgment of the Madhya Pradesh High Court in the case of CIT vs. K. N. Oil Industries reported in 226 ITR 547 in which the High Court held that losses of earlier years were not deductible from the total income for purposes of computation of special deduction under Sections 80HH and 80I (predecessors of Section 80I). Further, according to the assessee, in any event, Section 154 of the Act was not applicable as there was no patent error in the order passed by the department under Section 143(1)(a). In this connection, reliance was placed by the assessee on the judgment of this Court in the case of T.S. Balaram, ITO vs. Volkart Brothers and ors. reported in 82 ITR 50. These contentions were rejected by the AO. Aggrieved by the order passed by the AO under Section 154, the assessee filed an appeal to CIT. The CIT(A) dismissed the appeal by following the judgment of this Court in the case of CIT vs. Kotagiri Industrial Co-operative Tea Factory Ltd. reported in 224 ITR 604. Aggrieved by the said order, the assessee filed an appeal to ITAT which was also dismissed saying that deduction under Section 80IA can be allowed only after setting off the carry forward losses of the earlier years in accordance with Section 72 of the Act, particularly when the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year was only from the industrial undertaking. According to the Tribunal, this was the law which was well settled by the judgment of the Supreme Court in the case of Kotagiri Industrial Co-operative Tea Factory Ltd. (supra). Therefore, according to the Tribunal, there was a patent mistake in the assessment order passed under Section 143(1)(a) and consequently the AO was right invoking Section 154 of the Act. This decision of the Tribunal has been upheld by the High Court. Hence, this civil appeal is filed by the assessee.

In our view, Section 154 of the Act was not applicable in this case. It is important to note that the provisions of Chapter VIA, particularly those dealing with quantification of deductions have been amended at least eleven times. Moreover, even Section 80IA, was earlier preceded by Sections 80HH and 80I, which has resulted in plethora of cases. In fact, some of the amendments have been enacted even after the judgment of this Court in the case of Kotagiri Industrial Co-operative Tea Factory Ltd. (supra) delivered on 5.3.1997. In the circumstances, we are of the view that one cannot say that this is a case of a patent mistake. The assessee followed the judgment of the Madhya Pradesh High Court in K. N. Oil Industries (supra). Hence, the assessee is right in submitting that the issue involved a moot question of law, particularly at the relevant time (assessment year 1997-98).

For the above reasons, on facts and circumstances of this case, we hold that Section 154 of the Act was not applicable. Consequently, the impugned judgment of the High Court is set aside. Civil appeal filed by the assessee stands allowed with no order as to costs.

.....CJI
[S.H. KAPADIA]

.....J.
[MADAN B. LOKUR]

New Delhi,
September 13, 2012.

ITEM NO.8 COURT NO.1 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2135 OF 2007

M/S. DINOSAUR STEEL LTD. Appellant (s)

VERSUS

JOINT COMMISSIONER OF INCOME TAX Respondent(s)

Date: 13/09/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. Preetesh Kapur, Adv.
 Ms. Radha Rangaswamy, Adv.
 Mr. L. Roshmani, Adv.

For Respondent(s) Mr. R.P. Bhatt, Sr. Adv.
 Mr. Arijit Prasad, Adv.
 Mr. Yatinder Chaudhary, Adv.
 Ms. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

The civil appeal filed by the assessee is allowed with no order as to costs.

[T.I. Rajput]
A.R.-cum-P.S.

[Indu Satija]
Court Master

[Signed order is placed on the file]