

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी,
न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 2880/Mds/2016

निर्धारण वर्ष /Assessment Year : 2010-11

M/s. Ramco Industries Ltd.,
47, P.S.K.Nagar,
Rajapalayam.
PAN AAACR5284J
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of
Income-tax,
Corporate Circle-2,
Madurai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri V. Jagadisan, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri U. Anjanayalu, CIT

सुनवाई की तारीख/Date of Hearing : 24.05.2017

घोषणा की तारीख/Date of Pronouncement: 22.06.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax passed under sec.263 of the Act, dated 30.8.2016.

2. The assessee has raised the following grounds :

“1. The order of Commissioner of Income Tax under section 263 is not legal as the proceedings initiated under section 263 is time barred.

2. The Commissioner of Income Tax has no power to raise an order dated 23.5.2015 made under section 143(3) r.w.s.263 as there is no error in the said order and if at all the CIT has no power to invoke action under section 263, it is only the original Assessment Order dated 1.2.2013 in which the Assessing Officer has considered the claim under section 80IA and not in the order dated 23.9.2015 and hence, the order under section 263 is time barred.

3. The Commissioner of Income Tax erred in holding that Assessing Officer allowed deduction under section 80IA without proper application of mind – without examining the claim made under section 80IA and without setting off accumulated loss of earlier years.

4. The Commissioner of Income Tax failed to consider written Representation dated 13/6/2016 that “no accumulated loss is carried forward and adjusted against profit”.

5. The Commissioner of Income Tax failed to consider the judgment of Madras High Court in the case of Velayudhasamy Spinning Mills (P) Ltd. (340 ITR 477) in appreciating the action of Assessing Officer in granting deduction under section 80IA (now confirmed by Hon’ble Supreme Court).

6. The order of Commissioner of Income Tax is not justified in setting aside the Assessment to rework the claim under section 80IA.”

3. The facts of the case are that originally assessment was completed u/s.143(3) of the Act, for the assessment year 2010-11 on 01.02.2013. The CIT issued notice u/s.263 of the Act on 09.03.2015 for the impugned assessment year and order u/s.263 on 30.03.2015. Consequently, the AO passed an order giving effect to the order of the CIT u/sd.143(3) read with sec.263 of the Act 23.09.2015. Once again, the CIT took the issue u/s.263 in respect of assessment order passed u/s.143(3) of the Act dated 23.09.2015 and issued notice dated 27.5.2016 and consequently, the present order under sec.263 was passed on 30.8.2016, thereby setting aside the order of the AO passed u/s.143(3) r.w.sec.263 of the Act dated 23.9.2015, and directing the AO to re-compute the deduction u/s.80IA of the Act with reference to the relevant provisions of law, after affording an opportunity of being heard to the assessee. Against this, the assessee is in appeal before us.

4. The Id. AR submitted that before the DCIT, the assessee has filed letter dated 21.9.2015 in response to the proceedings initiated by the AO to give effect to the order of CIT u/s.263 of the Act dated 30.3.2015. The AO gave effect to the order of the

CIT dated 30.3.2015 u/s.263 by order u/s.143(3) r.w.sec.263 of the Act dated 23.9.2015. In this order, the AO has not made any disallowance towards the sum of ₹ 7,50,000/-. Therefore, the Id. AR submitted that on the very same issue a second show cause notice cannot be issued under sec.263 of the Act to disallow the sum of ₹7,50,000/- as capital expenditure. The Id. AR, further submitted that the show cause notice issued in respect of the assessment order dated 01.02.2013, but as per sec.263(2) of the Act, the limitation period is “2 years from the end of the financial year in which the order sought to be revised was passed”. In this case, the order of the assessment is dated 1.2.2013 and limitation period expires on 31.3.2015. Hence, the Id. AR submitted that the above showcause notice is time barred.

5. The Id. DR relied on the order of the Commissioner of Income-tax.

6. We have heard both the parties and perused the material on record. The main contention of the Id.A.R is that notice dated 27.05.2016 issued by the Id.CIT is for revising the assessment

order dated 01.02.2013 is bad in law as it is time barred. According to him, the assessment order dated 01.02.2013 cannot be revised after 31.03.2015. According to him, even in the case of second revision, the period of limitation u/s.263 of the Act starts from the original assessment order and not from the re-assessment order. For this purpose he relied on the judgement of Supreme Court in the case of CIT Vs. Alagendran Finance Ltd., reported in 293 ITR 01. This argument of the Id.A.R is totally misconceived. The Id. CIT in his first order u/s.263 of the Act dated 30.03.2015 inter alia had given a direction to do fresh enquiry with regard to claim of deduction u/s.80-IA of the Act. The AO while passing the order giving effect to the order u/s.263 dated 30.03.2015 vide assessment order dated 23.09.2015, has not dealt the issue relating to deduction u/s.80-IA of the Act. Being so, the assessment order passed by the AO u/s.143(3) r.w.s.263 of the Act dated 23.09.2015 is not in conformity with the direction of the CIT order u/s.263 of the Act dated 30.03.2015. There is an error in the assessment order with regard to non-compliance of direction of the CIT passed u/s.263 of the Act dated 30.03.2015. Being

so, on this reason Id.CIT assumed jurisdiction u/s.263 of the Act for revision of assessment order dated 23.09.2015 passed u/s.143(3) r.w.s.263 of the Act. In other words, the CIT took up the issue, which was not dealt by the AO in the assessment order dated 23.09.2015, which is giving effect to the Revision Order passed u/s.263 of the Act dated 30.03.2015. The proposition laid down by the Supreme Court in the case of CIT Vs. Alagendran Finance Ltd.,(supra) is that in respect of the issue which was not subject matter of re-assessment proceedings, the period limitation u/s.263(2) to run from the date of the order of the assessment and not from the order of re-assessment and revision proceedings initiated in respect of such issue beyond the period of 2 years from the date of original assessment were barred by limitation.

6.1 In the present case, the issue relating to the availability of deduction u/s.80-IA of the Act is the subject matter of revision order passed u/s.263 of the Act dated 30.03.2015 and the direction of the CIT in this order was not complied by AO in the assessment order dated 23.09.2015. Hence, Id. CIT is within

jurisdiction in assuming jurisdiction u/s.263 of the Act on this issue with reference to the second assessment order. There is no question of time barred. Accordingly, this ground raised by the assessee is rejected.

7. Now coming to the allowability of deduction u/s.80-IA of the Act. Ld.A.R submitted that there is a judgement from the jurisdictional High Court in the case of Velayudhasamy Spinning Mills Ltd., in 340 ITR 477(Madras) wherein it was held that loss in the year earlier to the initial assessment year already absorbed against the profit of other business could not be notionally brought forward and set off against the profits of the eligible business as no such mandate was provided in sec.80-IA(5) of the Act. Admittedly, there was an judgement on the issue of applicability of Sec.80-IA(5) of the Act while computing the deduction u/s.80-IA of the Act. However, in the present case, the issue is not relating to applicability of the above case law. In other words, there was no discussion whatsoever by the AO in the assessment order dated 23.09.2015 passed u/s.143(3) r.w.s. 263 of the Act, which is a consequential order

to CIT order. The assessment order is very silent on this issue. The AO being a quasi-judicial authority, cannot take a view either against or in favour of the assessee without making proper enquiries and without proper examination of the claim made by the assessee in the light of the applicability of law. Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted.

7.1 In the present case, the Learned Commissioner of Income Tax was of the opinion that there is no proper enquiry by the Learned Assessing Officer on the issue relating to the availability of deduction u/s.80-IA of the Act. The Learned Assessing Officer, in spite of specific direction by the Id.CIT in his earlier order dated 30.03.2015 passed u/s.263 of the Act,

kept silent while passing the assessment order dated 23.09.2015. It is incumbent upon the Learned Assessing Officer to enquire about the issue relating to the granting of deduction u/s.80-IA of the Act in accordance with the direction of the Learned Commissioner of Income Tax while passing his order dated 30.03.2015. The Learned Assessing Officer absolutely close his eyes for extraneous reasons and accepted the claim of assessee as it is. Hence, the Learned Commissioner of Income Tax has given a direction in his second revisional order dated 30.08.2016 to pass fresh order on the issue relating to the deduction u/s.80-IA of the Act after proper enquiry. Being so, we are of the opinion that the Id. Learned Commissioner of Income Tax is justified in remitting the issue relating to the deduction u/s.80-IA of the Act to the file of Learned Assessing Officer. However, we make it clear that while passing the consequential order, the AO shall take notice of judgement of jurisdictional High Court in the case of Velayudhasamy Spinning Mills Ltd.(supra) and he should pass the order in conformity with the judgement of jurisdictional High

Court and he shall not overlook the same. With this observation, we confirm the order of Id.CIT on this issue.

8. In the result, the appeal of assessee is dismissed.

Order pronounced on 22nd June, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd June , 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.