

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.598 & 599/Chny/2018

निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

The Assistant Commissioner of
Income Tax,
Central Circle – 2(1),
Investigation Wing,
Chennai - 600 034.

v.

M/s Mohan Breweries & Distilleries
Ltd.,
Phase I, 3rd floor, 605 & 606,
T.R. Sundaram Avenue,
Chennai - 600 006.

PAN : AAACM 2415 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Guru Bashyam, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 01.08.2018

घोषणा की तारीख/Date of Pronouncement : 10.08.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals)-18, Chennai, dated 29.11.2017 and pertain to assessment years 2005-06 and 2006-07. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Shri Guru Bashyam, the Ld. Departmental Representative, submitted that the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act') on 29.03.2012 for both the assessment years. According to the Ld. D.R., the assessee claimed deduction under Section 80-IA of the Income-tax Act, 1961 (in short 'the Act') in respect of three windmill units. The Assessing Officer after considering the Finance Act, 1998, found that windmill cannot be equated with power generating unit as contemplated in Annexure 1A of Depreciation Schedule, therefore, the assessee is not eligible for deduction under Section 80-IA of the Act. Accordingly, he withdrew the same. However, according to the Ld. D.R., the CIT(Appeals) found that the assessments were reopened beyond the period of four years and no fresh material was available before the Assessing Officer for reopening the assessments. Accordingly, the CIT(Appeals) found that the reopening of assessments was illegal. According to the Ld. D.R., since the Assessing Officer has rightly reopened the assessments, the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the issue of deduction under Section 80-IA of the Act in respect of windmill was disallowed by the Assessing Officer in the original assessments. According to the Ld. counsel, the assessee filed appeals for both the assessment years before the CIT(Appeals) and the CIT(Appeals), in fact, allowed depreciation on the windmill and further appeals were filed before this Tribunal and this Tribunal found that the assessee is eligible for deduction under Section 80-IA of the Act. According to the Ld. counsel, the High Court also confirmed the order of this Tribunal. Now, the Assessing Officer claims in the assessment orders that an SLP is pending before the Supreme Court. When the matter is said to be pending before Supreme Court in respect of deduction under Section 80-IA of the Act, according to the Ld. counsel, the Assessing Officer has now reopened the assessments by issuing notice under Section 148 of the Act on the ground that windmill cannot be equated with power generating unit. According to the Ld. counsel, when the order of the Assessing Officer was merged with the order of this Tribunal and the judgment of Madras High Court, he has no jurisdiction to overturn the order of this Tribunal and the

judgment of Madras High Court. Therefore, according to the Ld. counsel, reopening itself is invalid.

4. We have considered the rival submissions on either side and perused the relevant material available on record. A perusal of the order of reassessment clearly shows that this Tribunal and Madras High Court allowed the claim of the assessee under Section 80-IA of the Act on the very same windmill. The Assessing Officer by referring the amendment made by Finance Act, 1998, claims that windmill cannot be equated with power generating unit. Therefore, he withdrew the deduction granted under Section 80-IA of the Act.

5. It is a common knowledge that when the Tribunal and High Court found that the assessee is eligible for deduction under Section 80-IA of the Act, the assessment order originally passed by the Assessing Officer is merged with the judgment of Madras High Court. The question arises for consideration is when the original order of assessment is merged with the judgment of Madras High Court, can the Assessing Officer reopen the assessment and withdraw the claim of deduction granted under Section 80-IA of the Act? This Tribunal is of the considered opinion that the Assessing Officer has no jurisdiction to overturn the judgment of Madras High

Court. The judgment of Madras High Court is binding on all the authorities in the State. Whatever may be the reason, the Assessing Officer has to follow the judgment of Madras High Court. Now the Revenue claims that an SLP was filed before the Apex Court. It is open to the Revenue to pursue remedy before the Apex Court in a manner known to law. However, the Assessing Officer cannot reopen the assessment and withdraw the claim of deduction under Section 80-IA of the Act which was already allowed by the Madras High Court.

6. The power to decide and adjudicate a dispute was technically conferred on the Assessing Officer under the Income-tax Act. However, real power flows from the confidence reposed by the people on the judicial system. Once the order of assessment is merged with the judgment of Madras High Court, the Assessing Officer cannot touch the order. If the Assessing Officer is allowed to overturn the judgment of Madras High Court, then the taxpayers / citizens of this country may not have confidence on the judicial system. Such a thing cannot be allowed to happen in this country. This Tribunal time and again points out that the judgment of jurisdictional High Court has to be scrupulously followed by all the

authorities in this State. Irrespective of this, this kind of things happen. We hope and confident that higher authorities in the Income-tax Department would take stock of the situation and give necessary instructions to subordinates to follow the judgment of jurisdictional High Court and Apex Court. This Tribunal cannot permit the Assessing Officer to overturn the judgment of Madras High Court merely because an SLP is pending before the Apex Court. After the judgment of Madras High Court confirming the order of this Tribunal, the Assessing Officer cannot reopen the assessment on the ground that windmill cannot be equated to power generating unit. The Assessing Officer ought to have raised this issue before this Tribunal or High Court. Having failed to raise the issue before the Tribunal or before the High Court, the Assessing Officer cannot reopen the assessment. The High Court, being constitutional High Court, its judgment has to be followed by all the authorities in this State. Therefore, reopening of the issue of deduction under Section 80-IA of the Act after the order of this Tribunal and the judgment of the Madras High Court is not justified. Hence, the CIT(Appeals) has rightly allowed the appeal of the assessee. Hence, this Tribunal do not find any reason to interfere

with the order of the CIT(Appeals) and accordingly the same is confirmed.

7. With the above observation, both the appeals of the Revenue are dismissed.

Order pronounced on 10th August, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 10th August, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.