

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 945/CHNY/2019

निर्धारण वर्ष /Assessment Year: 2014-15

**M/s. Sri Kalaivani Spinners
Pvt. Ltd.,**
Myvadi Road, Myvadi Post,
Udumalpet – 642 203.

The ITO,
v. Corporate Ward-1,
Coimbatore

PAN: AACCS 7203G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri M. Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 03.03.2022

घोषणा की तारीख/Date of Pronouncement

: 04.03.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by assessee is arising out of the revision order passed u/s. 263 of the Income Tax Act, 1961 (hereinafter 'the Act') by the learned Principal Commissioner of Income Tax-3, Coimbatore in C.No.321(2A)263/2018-19/Pr.CIT-3/CBE dated 25.03.2019. The assessment was completed by the ITO, Corporate Ward 1,

Coimbatore for assessment year 2014-15 u/s.143(3) of the Act, vide order dated 26.12.2016.

2. The only issue in this appeal of assessee is against the order of PCIT assuming jurisdiction u/s.263 of the Act consequently passing the revision order in setting aside the completed scrutiny assessment framed u/s.143(3) of the Act allowing the claim of deduction u/s.80IA after considering the issue and after examining the issue. For this assessee has raised various grounds which we need not to reproduce.

3. Brief facts are that the assessment was completed u/s.143(3) of the Act for the relevant assessment year 2014-15 and allowed the claim of deduction u/s.80IA of the Act by relying on the decision of Hyderabad Bench of ITAT in the case of ITO vs. S. Venkatiah, (2012) 52 SOT 437 (Hyd). Subsequently notice u/s.263 of the Act was issued by PCIT dated 25.10.2018 for revising the assessment framed by assessee on the reason that the return of income filed by assessee as on 30.03.2015 is beyond the due date specified u/s.139(1) of the Act. Further, the audit report in Form 10CCB also uploaded belatedly on 28.03.2015 though the extended date for submission of audit report u/s.44AB of the Act for the relevant

assessment year was 30.11.2014. According to the PCIT as per section 80AC of the Act, no deduction u/s.80IA shall be allowed to the assessee, unless he furnishes the return of income for such assessment year on or before due date as specified u/s.139(1) of the Act. The assessee replied but the PCIT passed a revision order by observing in para 12 & 13 as under:-

12. I have perused the facts of the case and materials on record and after discussing the case with the Authorized Representative, the order under consideration is held as erroneous and prejudicial to the interest of the revenue and that it is not passed after duly examining the said issues.

13. Hence, the order u/s.143 of the Income Tax Act, 1961 is set aside with a direction to the Assessing Officer to redo the assessment as per law considering the facts of the case and affording the assessee a reasonable opportunity of being heard.

4. We have hard rival contentions and gone through the facts and circumstances of the case. We have perused the case records. Before us, the Id.counsel for the assessee Shri S. Sridhar, stated that the original assessment framed allowing deduction u/s.80IA of the Act was based on the decision of Co-ordinate Bench of ITAT, Hyderabad in the case of S. Venkatiah, *supra*. The Id.counsel for the assessee carried us through para 6.1 of the assessment order which reads as under:-

6.1 Deduction u/s 80-IA

6.1.1. As per the provisions of Section 80AC deduction is admissible under section 80-IA only if the assessee furnishes a return of income on or before the due date specified under sub-section (1) of section 139.

6.1.2 In this case, the assessee filed their return of income only on 31.03.2015 i.e., beyond the due date provided u/s 139(1). The Audit Report in Form 10CCB was also uploaded by the assessee only on 28.03.2015.

6.1.3 As the assessee has not satisfied the mandate of Section 80AC, the assessee was found ineligible to the claim of deduction u/s 80IA and was called upon to offer their explanations.

6.1.4 In this connection, submissions were made by the A.R. provisions of Section 80AC are only directory in nature and not mandatory. It was mentioned that the assessee has filed the return within the time specified in Section 139(4). It was also the case of the assessee that the provisions of Section 80-IA are to be interpreted liberally. The assessee cited the decision of the Hon'ble Hyderabad Bench of the ITAT in the case of ITO vs. S. Venkatiah (2012) 52 SOT 437 (Hyd.) The A.R. also filed an affidavit of Shri RM. Muthu, Director of the company, outlining the reasons for the delay in filing of the return.

6.1.5 After considering the submissions put forth on behalf of the assessee and the decisions cited, the deduction u/s.80-IA is allowed.

4.1 We noted that the PCIT relied on another decision of Co-ordinate Bench of ITAT, Chennai in the case of P. Bhavani vs. ACIT, [2015] 61 taxmann.com 251 and noted that since the jurisdictional ITAT is binding, the deduction allowed by AO u/s.80IA of the Act,

the assessment is erroneous and prejudicial to the interest of Revenue. For this, the PCIT observed in para 9 as under:-

“9. Since, the decision of the jurisdictional ITAT is binding, the AO ought to have followed the decision of the Hon’ble ITAT delivered in the case of P. Bhavani. By not doing so, the AO has granted ineligible relief of Rs.45,82,554/- to the assessee thereby rendering the assessment erroneous and prejudicial to the interest of revenue requiring remedial action by taking recourse to sec.263 of the Income Tax Act, 1961.

4.2 We noted that the PCIT himself admits that there are different views possible on this issue and issue is highly debatable. Once the issue is highly debatable no revision is possible invoking the provisions of section 263 of the Act. Hence, we quash the revision order passed by PCIT u/s.263 of the Act and allow the appeal of the assessee.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 4th March, 2022 at Chennai.

Sd/-
(गिरीश अग्रवाल)
(GIRISH AGRAWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 4th March, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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