

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य केसमक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 769/Mds/2013

निर्धारण वर्ष /Assessment Year : 2008-09

Shri K.P. Murugasamy,  
5, AKS Nagar, Thadagam Road,  
R.S. Puram,  
Coimbatore – 641 002.

v.

The Deputy Commissioner of  
Income Tax,  
Circle III,  
Coimbatore – 641 018.

PAN : AAZPM 3140 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. Ruby George, CIT

सुनवाई की तारीख/Date of Hearing : 22.01.2015

घोषणा की तारीख/Date of Pronouncement : 23.01.2015

### **आदेश / O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 18.12.2012 passed Ld CIT-I, Coimbatore u/s 263 of the Act for assessment year 2008-09. The assessee is questioning the validity of revision order passed by Ld CIT.

2. The appeal is barred by limitation by 59 days. The assessee has filed an affidavit before the bench, wherein it is stated that the assessee fell ill due to liver problem in December, 2012, which finally resulted in liver transplant and continuous treatment. Accordingly it was stated that the assessee could not hand over the revision order to his Chartered Accountant for filing appeal. Accordingly it was prayed that the delay in filing the appeal be condoned. We heard Ld D.R on this preliminary issue. Having regard to the submissions made by the assessee in the affidavit, we are of the view that there was sufficient cause for not filing the present appeal within the prescribed time. Accordingly we condone the delay and admit the appeal for hearing.

3. The Ld Counsel appearing for the assessee submitted that the assessing officer completed the assessment for AY 2008-09 u/s 143(3) of the Act on 20/12/2010, accepting the loss of Rs.16,50,870/- returned by the assessee. He submitted that the assessee is carrying on cloth dyeing business. The assessee was alleged to have caused pollution and in the suit filed against the assessee by "Noyyal River Ayacutdars Protection Association", the Court awarded compensation on the 'Polluter Pays Principle' @ six paise per litre of water discharged from 1.1.2007 to 1.3.2007; @ eight paise per litre from 1.4.2007 to 31.5.2007 and @ 10 paise per

litre from 1.6.2007 to 31.7.2007 and accordingly allowed the business to continue. Accordingly, the assessee paid a sum of Rs.19,93,506/- and claimed the same under the head "Ecological compensation". The Ld A.R submitted that the suit was filed as "Public interest litigation" and the Hon'ble Court has awarded compensation on a particular basis. The assessee was constrained to pay the said compensation in order to run the business without any interruption. Accordingly the assessee claimed the above said amount as revenue expenditure u/s 37(1) of the Act.

4. The Ld A.R further submitted that the assessing officer, during the course of assessment proceedings, made specific enquiries about the claim made under the head "Ecological compensation" and the assessee has, vide his letter dated 22.11.2010, inter alia, furnished following reply:-

"e. ECOLOGICAL COMPENSATION:-

Ecology compensation was paid on the basis of court direction under the headings "Loss of Ecology and Orathupalayak Dam Cleaning" to the District Collector, Coimbatore through Dyers Association and Angeripalayam Common Effluent Treatment Plant Limited (ACETP). A copy of the notice of demand and a certificate issued by ACETP along with ledger copy are enclosed for your records."

The Ld A.R submitted that the assessing officer has, thus examined the claim during the course of assessment proceeding and has

accepted the same as revenue expenditure. He submitted that the view taken by the assessing officer is one of the plausible views and hence the Ld CIT was not justified in passing the impugned revision order.

5. The Ld A.R further submitted that the Ld CIT has taken the view that the assessee has contravened the Pollution Control Laws and hence the Court has awarded compensation. He submitted that the assessee has paid this compensation consequent to the order passed by the Court in a public interest litigation filed by a farmers' association and hence the Ld CIT(A) was not right in law in presuming the same to be in the nature of fine. He submitted that, in any case, the assessing officer has taken a possible view of the matter and hence the revision order passed by the Ld CIT is not sustainable. In this regard, the Ld A.R placed reliance on the following case law:-

- (a) Max India Ltd (295 ITR 282)(SC)
- (b) Mepco Industries (294 ITR 121)(Mad)
- (c) Sacsoft Ltd (298 ITR 63)(Mad).

6. On the contrary, the Ld D.R submitted that the assessee was required to comply with the norms prescribed by the Pollution Control Board for treating the effluents, which the assessee has not

complied with and the same has resulted in infraction of Pollution Control Laws. The Court has awarded compensation upon the assessee in connection with the above said failure and hence the same is in the nature of fine for infraction of Pollution Control Laws. The fines and penalty paid for infraction of law is not allowable as deduction under section 37 of the Act. However, the assessing officer has not examined the said claim in proper perspective and hence the assessment order has been rendered erroneous and prejudicial to the interests of revenue. Accordingly, the Ld D.R contended that the impugned revision order should be sustained.

7. Before going into the merits of the issue, we would like to discuss about the legal position with regard to the power of Learned CIT to invoke revision proceedings under section 263 of the Act. The scope of revision proceedings initiated under section 263 of the Act was considered by Hon'ble Supreme Court and various High Courts. We may gainfully refer to the observations made by Hon'ble Bombay High Court, in the case of *Grasim Industries Ltd. V CIT* (321 ITR 92), which are extracted below:

“Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing

Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be “erroneous in so far as it is prejudicial to the interests of the Revenue”. This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision “cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer” and “it is only when an order is erroneous that the section will be attracted”. The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression “prejudicial to the interests of the Revenue”, the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an

erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an 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 does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

In order to invoke the revision jurisdiction u/s 263 of the Act, it has to be shown by the Ld CIT that the assessment order was not only erroneous, but also prejudicial to the interests of the revenue, i.e., both the conditions prescribed in sec. 263 of the Act are to be shown to exist. The observations made by Hon’ble Supreme Court in the case of Malabar Industrial Company (supra) are very much relevant here, i.e., if the assessing officer has 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 does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.

8. With the above said legal propositions, we shall now examine the facts prevailing in the instant case. The assessee has paid a compensation of Rs.19,93,506/- as per the order passed by the Court. It was stated that the suit was filed by “Noyyal River Ayacutdars Protection Association” as public interest litigation against the business houses engaged in cloth dyeing business. The assessee was one of the parties against whom the suit was filed. According to the Ld A.R, this compensation was paid to the farmers, who were affected by the pollution. Apart from finalising the methodology for payment of compensation, the Court has also ordered to set up Common Effluent Treatment Plants (CETP). It has been further ordered that in case of default in payment of compensation, the Pollution Control Board shall direct closure of such defaulting CETP and the member units and also disconnect the power supply to such defaulting CETP and the member unit. Accordingly, it was contended by the assessee that it has paid the compensation in order to run the business without any interruption

and the same was incurred for the purpose and also during the course of carrying on business. Thus, according to the assessee, it was a revenue expenditure and hence the assessing officer has allowed the same as deduction.

9. However, the Ld CIT has taken the view that the assessee was constrained to pay the compensation for the failure on the part of the assessee to follow the norms prescribed by the Pollution Control Board and hence the said payment is in the nature of fine for infraction of Pollution Control Laws. Hence the same cannot be considered as an expenditure laid out for the purpose of business.

10. The question whether the payment made by the assessee in accordance with the Court's order is in the nature of "Compensation" or in the nature of "Fine" is the dispute here. While the assessee's claim is that it is in the nature of Compensation and same is allowable as normal business expenditure, the Ld CIT's view is that the same is in the nature of fine for infraction of Pollution Control Laws. A perusal of the both the views would show that the issue relating to the deduction of compensation paid as per Court's order is a debatable issue and hence two views are possible in this matter. Apparently the assessing officer has taken one view, which, according to us, cannot be said to be not sustainable in law. Hence,

we are of the opinion that the assessing officer has taken one of the possible views in this matter and hence the assessment order passed by him cannot be considered to be erroneous and prejudicial to the interests of the revenue. Accordingly, we are of the view that the Ld CIT was not right in assuming jurisdiction u/s 263 of the Act and hence we are unable to sustain the order of Ld CIT. Accordingly we set his order.

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

Order pronounced on the 23<sup>rd</sup> day of January, 2015 at Chennai.

Sd/- (विकास अवस्थी) (Vikas Awasthy) न्यायिक सदस्य/Judicial Member	sd/- (बी.आर. बास्करन) (B.R. Baskaran) लेखा सदस्य/Accountant Member
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चेन्नई/Chennai,  
दिनांक/Dated, the 23<sup>rd</sup> January, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT-I, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.