Super Spinning Mills Ltd. Vs Asstt. Commissioner of Income Tax

Court: Madras High Court

Date of Decision: April 8, 2009

Acts Referred: Income Tax Act, 1961 â€" Section 147

Citation: (2010) 323 ITR 449

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: K. Ravi, for the Appellant; J. Naresh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

K. Raviraja Pandian, J.
The Assessee by formulating the following questions of law canvassed the correctness of the order of the Tribunal

dated 2-7-2008, made in I. T. A. No. 13 of 2005 relating to the assessment year 2000-01.

1. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in upholding the order of the assessment, when in

fact the learned assessing officer could not have had any reason to believe that the income had escaped assessment ?

2. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal has erred in not quashing the order of assessment when

the ratios of the decisions of the High Court of Madras were clearly applicable to the instant case ?

3. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in upholding the order of assessment when in fact

there was no new material found in possession of the learned assessing officer so as to initiate proceedings u/s 147 of the Income Tax Act, 1961 ?

2. The facts as culled out from the statement of facts are as follows: The Appellant-Assessee is a public limited company engaged in the business of

manufacture and sale of cotton yarns. For the assessment year 2000-01, the Assessee-company filed return of income on November 29, 2000,

admitting a total income of Rs. 84,05,000 under the normal computation and Rs. 1,35,23,360 as book profit u/s 115JA. The return of income was

assessed u/s 143(1) on 27-11-2000. The assessing officer has initiated reassessment proceedings by issuing notice u/s 148 and following the

procedure contemplated therein disallowed seven categories of machines valued at Rs. 532.27 lakhs claimed as revenue expenditure and treated it

as capital expenditure and also depreciation at the rate of 25%.

3. The matter was taken up before the Commissioner (Appeals), who partly allowed the claim of the Assessee. In respect of that portion that went

against the Assessee, the Assessee carried the matter to the Income Tax Appellate Tribunal, by raising a fresh ground of appeal challenging the

validity of the assessment u/s 147, since it was purely a legal ground required no further examination of facts.

4. The Tribunal, upon hearing the parties, remitted the matter back to the 4 Commissioner (Appeals) for reconsideration of the issue as to whether

replacement of the machinery can be regarded as revenue expenditure or capital expenditure in terms of the law laid down by the apex court in the

case of Commissioner of Income Tax Vs. Ramaraju Surgical Cotton Mills, and considered the next issue as to the reopening and held that the

ingredients of Section 147 are fulfilled and at the time of processing the return, there is no scope of any enquiry. On the reasons which are adduced

for reopening the assessment there was considerable debate and the matter travelled up to the Supreme Court and as such the Tribunal found no

merit in the contention of the learned Counsel for the Assessee that the ingredients of Section 147 were missing. Holding so, the appeal of the

Assessee was disposed of by terming as allowed partly. The correctness of the same is now canvassed before this Court as stated earlier by

formulating the question of law in respect of the reassessment only.

5. On the reading of the order of the Tribunal, we are of the view that the correctness of the reopening of the assessment u/s 147 does not arise for

consideration because on the merits it was the stand of the Assessee before the Tribunal that the matter required to be reconsidered by the

Commissioner (Appeals). In order to be very specific, paragraph 6 of the order of the Tribunal is reproduced here:

6. In the facts of the present case also we find that the relevant details were not made available. As such the different tests to ascertain with

exactitude the real nature of the expenditure cannot be applied. Both the parties agreed that the matter may be remitted to the Commissioner

(Appeals) for fresh adjudication.

6. When it has been accepted before the Tribunal for remittal of the case for fresh adjudication before the Commissioner (Appeals), the question

as to the correctness of the reopening is virtually redundant in this particular case. Hence, any further deliberation on this issue can only be

regarded as after thought to protract the proceedings.

7. At the risk of repetition we say once the matter on the merits has been 7 agreed to be settled before the Commissioner (Appeals) for

adjudication, we are of the view that the question of law does not arise for consideration despite the fact that certain finding has been given by the

Tribunal. Hence, the appear is dismissed.