
(2010) 03 MAD CK 0252**Madras High Court****Case No:** Tax Case (Appeal) No. 898 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Kunal Engineering Co. Ltd.

RESPONDENT

Date of Decision: March 1, 2010**Acts Referred:**

- Income Tax Act, 1961 - Section 143(1)(a), 143(2), 260A, 34A, 80HHC

Citation: (2010) 325 ITR 328**Hon'ble Judges:** Prabha Sridevan, J; P.P.S. Janarthana Raja, J**Bench:** Division Bench**Advocate:** K. Subramaniam, M/s. Pushya Sitaraman, J. Naresh Kumar and T. Ravikumar, for the Appellant;**Final Decision:** Dismissed

Judgement

P.P.S. Janarthana Raja, J.

The present appeal is filed u/s 260A of the income tax Act, 1961 by the Revenue, in I. T. A. No. 205/Mds/1996, against the order passed by the income tax Appellate Tribunal, Madras, "B" Bench. When the above matter came up for hearing this court admitted the appeal on the following substantial question of law.

Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in upholding the order of the Commissioner of income tax (Appeals) and directing the Assessing Officer to recompute the relief u/s 80HHC by setting off Rs. 1,47,45,098 being two-thirds of unabsorbed depreciation for the earlier years is valid in law?

The brief facts leading to the above question of law are as under:

2. The assessee is engaged in textile industry. The relevant assessment year is 1992-93 and the corresponding accounting year ended on March 31, 1992, and now the company is under liquidation. The assesses filed a return of income showing an

income of Rs. 38,27,550 after adjusting the carry forward of losses, unabsorbed depreciation and investment allowance. The said return was processed u/s 143(1)(a) of the income tax Act. The Assessing Officer issued a notice u/s 143(2) of the income tax Act and the assessment was completed. While completing the assessment the Assessing Officer also set off unabsorbed depreciation for the purpose of computing the relief u/s 80HHC. Aggrieved by the order the assessee filed an appeal before the Commissioner of income tax (Appeals). The Commissioner of income tax (Appeals) allowed the appeal partly and directed the Assessing Officer to restrict the set off to the extent of two-thirds of the amount of unabsorbed depreciation. Aggrieved by that the Revenue filed an appeal before the Tribunal. The Tribunal dismissed the appeal confirming the order of the Commissioner of income tax (Appeals). Aggrieved by the same, the Revenue filed the present appeal.

3. Learned standing counsel appearing for the Revenue, submitted that the order passed by the Tribunal is not in accordance with law and also submitted that the Assessing Officer correctly set off the unabsorbed depreciation, while computing the relief u/s 80HHC. Therefore the order passed by the Tribunal has to be set aside.

4. In spite of notice served on the respondent and his name is printed in the cause list, there is no representation.

5. Heard the counsel and perused the documents and records. It is seen that section 34A of the income tax Act restricts on unabsorbed depreciation and unabsorbed investment allowance for limited period, in case of certain domestic companies. Section 34A was introduced by the Legislature with effect from April 1, 1992, which reads as follows:

34A. (1) In computing the profits and gains of the business of a domestic company in relation to the previous year relevant to the assessment year commencing on the 1st day of April, 1992, where effect is to be given to the unabsorbed depreciation allowance or unabsorbed investment allowance or both in relation to any previous year relevant to the assessment year commencing on or before the 1st day of April, 1991, the deduction shall be restricted to two-thirds of such allowance or allowances and the balance,-

(a) where it relates to depreciation allowance, be added to the depreciation allowance for the previous year relevant to the assessment year commencing on the 1st day of April, 1993, and be deemed to be part of that allowance or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year and so on for the succeeding previous years;

(b) where it relates to investment allowance, be carried forward to the assessment year commencing on the 1st day of April, 1993, and the balance of the investment allowance if any still outstanding shall be carried forward to the following assessment year and where the period of eight years has expired before the portion of such balance is adjusted, the said period shall be extended beyond eight years till

such time the portion of the said balance is absorbed in the profits and gains of the business of the domestic company.

6. From a reading of the above clause it is clear that the set off unabsorbed income should be restricted to the extent of two-thirds, the Commissioner of income tax as well as the Appellate Tribunal correctly followed the above provision. Therefore the order of the Tribunal is in accordance with law and the finding is given based on materials. In view of the foregoing reasons, we are of the view that the order of the Tribunal is in conformity with law and there is no error or infirmity in the order of the Tribunal and the same warrants no interference. The learned counsel for the Revenue was unable to give us any fresh material evidence or any compelling reasons to take a contrary view than the one taken by the Tribunal. In these circumstances, the order passed by the Tribunal is in accordance with law and the same is confirmed. The question of law is answered in favour of the assessee and against the Revenue. The Tax Case (Appeal) filed by the Revenue is devoid of merit and the same is dismissed. No costs.