

(2011) 06 MAD CK 0535

In the Madras High Court

Case No : Tax Case (Appeal) No's. 1322 and 1323 of 2005

CIT

APPELLANT

Vs

Thambi Modern Spinning Mills Ltd.

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Income Tax Act, 1961 — Section 115J, 143(1)(a), 147, 148, 149

Citation : (2012) 341 ITR 229

Hon'ble Judges : P.P.S. Janarthana Raja, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Subramaniam, for the Appellant;

Judgement

Mrs. Chitra Venkataraman, J.—The Revenue has come up on appeal as against the order of the income tax Appellate Tribunal, Madras "B" Bench, dated 26-2-2003, in I.T.A. Nos. 1556, 1557 of 1994 relating to the assessment years 1991-92 and 1992-93 raising the following substantial question of law :

1. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the rectification u/s 154 is not allowable on the issue of carry forward of allowances while completing the assessment u/s 115J as the issue is debatable ? and

2. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing the claim of the assessee to carry forward the losses and allowances ?

Even though notice was served on the assessee and the assessee's name appears in the cause list, there was no representation of behalf of the assessee.

2. The assessee herein filed its returns for the abovesaid assessment years claiming unabsorbed investment allowance to be set off for the assessment years 1991-92 and 1992-93 u/s 115J of the income tax Act, 1961 (hereinafter called as "the Act"). The return were processed u/s 143(1)(a) of the Act. Subsequently, the assessing officer invoked his jurisdiction u/s 154 of the Act. Aggrieved by the

same, the assessee filed an appeal before the Commissioner of Income tax (Appeals). However, the Commissioner of Income tax (Appeals) dismissed the appeal on the ground that the issue of carry forward allowance in computing the assessment was based on the provisions of section 115J of the Act and could be rectified u/s 154 of the Act having regard to the facts that the mistake of fact was an apparent one. Aggrieved by the same, the assessee filed an appeal before the Tribunal.

3. It is seen from the order of the Tribunal that it agreed with the assessee's contention that brought forward allowance could not be set off as against the income computed u/s 115J of the Act. In so holding, it allowed the appeal following the decision in the case of Commissioner of Income Tax Vs. Fab Exports (P.) Ltd., Thus, the Tribunal held that even on the merits, rectification could not be sustained. The Tribunal further held that as on the date of assessment, there was divergence of opinion and the issue was highly debatable. It was further pointed out that debatable issue would not come under the purview of a mistake of fact on the face of record and, therefore, the order passed by the assessing officer u/s 154 of the Act could not be sustained. Aggrieved by the same, the Revenue has come on appeal before this court.

4. It is seen from the decision of the apex court in the case of Mepco Industries Ltd., Madurai Vs. Commissioner of Income Tax and Another, that under similar circumstances, the apex court held that subsequent decision of the apex court did not obliterate the conflict of opinion which existed as on the date of passing of the assessment order. u/s 154 of the Act, rectification was not permissible on the debatable issue. The apex court held that section 154 deals with rectification of mistake. Section 154(1), inter alia, states that, with a view to rectify any mistake apparent from the record, an income tax authority may amend any order passed by it under the provisions of the Act, whereas section 147, inter alia, states that if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 to 153, assess or reassess such income which has escaped assessment and which comes to the notice of the assessing officer subsequently in the course of proceedings under the said section. It further pointed out that as far as the facts therein were concerned, the issue as to whether the subsidy was capital receipt or revenue receipt was decided in the decision of the apex court in the case of M/s. Sahney Steel and Press Works Ltd., Hyderabad etc. etc. Vs. Commissioner of Income Tax, Andhra Pradesh-I, Hyderabad, long after the assessment was completed. In the given set of facts, as on the date of assessment, there was a conflict of opinion, which was settled subsequent to the passing of the order of assessment. The apex court further pointed out that the rectification contemplated u/s 154 must be a rectifiable mistake. A decision on a debatable point of law could not be taken as a mistake apparent from record. Having regard to the decision of the apex court on the issue of jurisdiction u/s 154 of the Act on the facts admitted, we do not find any ground to interfere with the order of the Tribunal. Consequently, the Tax Case

(Appeals) stand dismissed and the substantial questions of law are answered against the Revenue. No costs.