(2016) 01 CAL CK 0056

In the Calcutta High Court

Case No : ITA 133 of 2006

C.I.T. Kolkata- III — APPELLANT

Vs

Indian Aluminium Co. Ltd. — RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Income Tax Act, 1961 — Section 143, Section 143(3), Section 147, Section 154, Section 263, Section 80M
Limitation Act, 1963 — Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17, Section 18, Section 1

Citation : (2016) 01 CAL CK 0056

Hon'ble Judges : G.C. Gupta and Asha Arora, JJ.

Bench : Division Bench

Advocate : P.K. Bhowmik and Ranjan Kr. Sinha, Advocates, for the Appellant; J.P. Khaitan, Sr. Advocate and Avra Mazumder, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order dated 5th October, 2005 passed by the Income Tax Appellate Tribunal, ''B'' Bench, Kolkata pertaining to the assessment year 1995-96.

2. The learned Tribunal allowed the appeal preferred by the assessee on the basis of the following reasoning:

"After hearing the contested rival submissions from both the sides and perusing the case record, we find that both on facts and on law the assessee has a good case. Since, the legal aspect has already been discussed above, we are inclined to discuss the factual aspect in brief which are as follows:

i) return filed on nil income on 29.11.95.

ii) original assessment order u/s. 143(3) was passed on 27.3.98.

iii) order u/s. 147 read with section 143(3) was passed on 28.3.03.

iv) order u/s. 154 was passed on 8.5.2003.

v) notice u/s. 263 was issued on 8.3.2005.

vi) reply was furnished by the assessee on 14.3.05.

vii) order was passed u/s. 263 on 21st March, 2005.

From the above chart itself it shows that the Revenue has made original assessment, reopening of the assessment, rectification and revision for the same assessment year and on the same issue. If this be allowed, there cannot be any finality to an assessment.

So, apart from the legal consideration, with this factual consideration it has been deemed proper to set aside the 263 order passed by the CIT."

3. Aggrieved by the order of the learned Tribunal, the Revenue has come up in appeal. The following question of law was formulated at the time of admission of the appeal:

"Whether on the facts and in the circumstances of the case, the order of the Income-Tax Appellate Tribunal cancelling the revision order passed by Commissioner of Income-Tax under Section 263 of the Income Tax Act, 1961, setting aside the reassessment order allowing deduction of gross dividend of Rs. 2,94,39,435/- under Section 80M of the Income Tax Act, 1961, without deduction of the expenses relating thereto in terms of Section 80AA of the Act and as held by the Hon''ble Supreme Court, is non-speaking confused and erroneous?"

4. Mr. Bhowmik, learned advocate appearing in support of the appeal submitted with some justification that the learned Tribunal disposed of the appeal by a non-speaking order. He submitted that deduction under section 80M of the Income Tax Act, 1961 could not have been allowed otherwise than in accordance with section 80AA which in this case was not done at all. Therefore, the exercise of power under section 263 was well justified. The learned Tribunal did not furnish any answer to the question which the revenue urged before the Tribunal by way of its appeal. Merely disposing of the appeal, on the basis of the reasoning quoted above which does not, according to him, assign any reason with any amount of certainty as to how or why was the point raised by the revenue failed to find favour with the learned Tribunal, is not enough.

5. Mr. Khaitan, learned Senior Advocate appearing for the assessee submitted that there can be no doubt that the judgment could have been written more explicitly but it cannot be said, according to him, that the learned Tribunal disposed of the matter either without application of mind or without considering the point of law. He submitted that before embarking upon any enquiry or examination of any contention, the question for consideration before the learned Tribunal was whether the power under section 263 was exercised within the prescribed period of limitation. He submitted that the learned Tribunal has

indicated in its finding that the original assessment order was passed on 27th March, 1998 and the notice under section 263 was issued on 8th March, 2005 and the order was passed on 21st March, 2005. He added that the exercise of power under section 263 was almost after expiry of seven years from the date of original assessment whereas such power can only be exercised within two years from the end of the financial year in which the order was passed. He submitted that the order was passed in the financial year 1997-98 which ended on 31st March, 1998. Therefore, the time to revise the order ended on 31st March, 2000 whereas the order was passed under section 263 on 21st March, 2005. Therefore, it was grossly barred by limitation. He drew our attention to sub-section 1 of section 3 of the Limitation Act which provides as follows:

"S. 3. Bar of limitation.-(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall he dismissed although limitation has not been set up as a defence."

6. He submitted that in the facts of the case any further discussion was not required because it is clear that the exercise of power under section 263 was barred by limitation. Mr. Bhowmik joined issue by contending that the order under section 263 was not barred by limitation because the order under section 143(3) read with section 147 was passed on 28th March, 2003. Therefore, the exercise was well within the period of two years. He submitted that the original assessment order passed on 27th March, 1998 merged in the order dated 28th March, 2003 passed under section 147 read with section 143(3). Therefore, the exercise of power under section 263 was within the period of limitation.

7. This submission appears to be plainly contrary to the view taken by the Supreme Court in the case of CLT v. Alagendran Finance Ltd., reported in , (2007) 293 ITR 1 (SC) wherein the following views were expressed:

"There may not be any doubt or dispute that once an order of assessment is reopened, the previous underassessment will be held to be set aside and the whole proceedings would start afresh but the same would not mean that even when the subject-matter of reassessment is distinct and different, the entire proceeding of assessment would be deemed to have been reopened."

8. Mr. Bhowmik has not disputed that the reopening under section 147 was not with respect to the point which he raised before us. That was altogether on a different point. Therefore, going by the judgment of the Apex Court in the case of CIT v. Alagendran Finance Ltd. (supra) it cannot be said that the original assessment dated 27th March, 1998 merged with the order dated 28th March, 2003 passed under section 143 read with section 143(3) of the Income Tax Act.

9. We are, as such, of the opinion that the order passed by the learned Tribunal is a just order.

10. For the reasons indicated above, the question formulated and indicated

above, is answered in the negative.

11. The appeal is dismissed.

