(2010) 03 KAR CK 0051

In the Karnataka High Court

Case No : IT Appeal No. 139 of 2005

Commissioner of Income Tax and Another APPELLANT

Vs

Krone Communication Ltd. RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:
Income Tax Act, 1961 — Section 154, 80 HHC

Citation : (2010) 233 CTR 203

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; King and Partridge, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—This appeal is by the Revenue challenging the concurrent findings passed by the CIT(A), which has been confirmed by the Tribunal, Bangalore, in ITA No. 1060/Bang/2002, dt. 17th Aug., 2004 raising the following substantial questions of law:

(1) Whether the appellate authorities were correct in holding that for the purpose of computation of deduction u/s 80HHC of the Act, the excise duty and sales-tax should be deleted?

(2) Whether the appellate authorities direction that the expenditure from the gross commission should first be reduced and then 90 per cent of the net commission should be given credit to, was in consonance with Expln. (baa) to Section 80HHC of the Act?

(3) Whether the appellate authorities were correct in holding that the claim of the assessee for reducing 10 per cent expenditure from the gross commission should be allowance in rectification proceedings u/s 154 of the Act, when the same was a debatable issue?

2. We have heard the learned Counsel for the parties.

3. The facts leading to this Court are as hereunder:

The assessee company filed the return of income for the asst. yr. 1993-94. The order of assessment was completed. Thereafter an application u/s 154 of the IT Act, was filed before the Jt. CIT on the ground that the assessee is entitled for certain relief based on the decision in Commissioner of Income Tax Vs. Sudarshan Chemicals Industries Ltd., Rathi Engineering Works and Klockner Windsor (I) Ltd., . Based on the decision in CIT v. Sudarshan Chemicals Industries Ltd. (supra), the Jt. CIT by his order dt. 14th March, 2001 rejected the application filed u/s 154 of the Act. Against which the assessee filed an appeal before the CIT(A), which appeal came to be allowed. Against which the appeal filed by the Revenue before the Tribunal has been rejected. Being aggrieved by the concurrent findings, the present appeal is filed.

4. After hearing, the learned Counsel for the parties submit that the questions of law framed earlier are required to be reframed. Therefore, based on their request, we reframe the question as hereunder:

(1) Whether the assessee filed an application u/s 154 of the Act for rectification of the order of assessment, which was completed based on the change of legal position pursuant to the verdict of any Court?

5. It is the contention of the Revenue that the order of assessment was completed on 29th July, 1999 and thereafter the assessee had not filed any appeal before the CIT(A). Therefore, he contends that the order passed by the AO had attained finality. He further contends that an application u/s 154 of the Act was filed by the assessee through its letter dt. 17th March, 2001 citing the judgment in CIT v. Sudarshan Chemicals Industries Ltd. (supra) and requests the Court to reduce the excise duty and sales-tax from the turnover and also to consider the net income of the agent commission while reducing 90 per cent thereof in calculation of eligible profit for the purpose of deduction u/s 80HHC, Therefore, he contends that the AO was justified in rejecting the application for rectification as the assessee cannot seek reopen of the order of assessment by filing u/s 154 of the IT Act, based on the decision pronounced either by the High Court or by the Supreme Court. Me further contends that the order passed by the CIT(A) and Tribunal are unjustifiable and liable to be set aside by this Court.

6. Per contra, the Learned Senior Counsel appearing for the respondent contends that even if the case of the Revenue is accepted in regard to the deduction to be considered u/s 80HHC of the Act in regard to excise duty and sales-tax are concerned, the same was not raised by the Revenue before the Tribunal and that the said deduction has been granted to the assessee based on the merits of the case. Therefore, he requests this Court to consider at least the excise duty and sales-tax to be deleted for the purpose of computation of tax u/s 80HHC of the Act.

7. Per contra, the learned Counsel for the Revenue contends that even the benefit of excise duty and sales-tax has been granted to the assessee by the CIT based on the order passed u/s 154 and therefore it cannot be contended by the assessee that the said issue had to be tried independently and relief has to be granted to the assessee.

8. Having heard the Counsel for the parties, we are of the view that the substantial question of law framed in this appeal is required to be answered in favour of the Revenue and against the assessee for the following reasons:

It is no doubt true that this Court in IT Appeal No. 27 of 2005 disposed of on 10th Dec., 2009 between the CIT v. MICO, has ruled that for the purpose of computation, the deduction u/s 80HHC, excise duty and sales-tax are required to deleted. But the question in this appeal is that the AC) had refused to grant the relief to the assessee. Being aggrieved by the order of assessment, it was for the assessee to file an appeal before the CIT(A) and the order of assessment came to be concluded on 29th July, 1999 and the order of assessment dt. 29th July, 1999 has become final since the assessee did not challenge the order of assessment. Later on, the assessee by addressing a letter to the Jt. CIT u/s 154, relying upon the judgment in CIT v. Sudarshan Chemicals Industries Ltd. (supra), requested the AO to rectify the order and to grant relief to the assessee. Therefore, it is clear that the application was filed by the assessee relying upon a subsequent decision of the High Court, which according to us, that an application u/s 154 of the Act, cannot be maintained on the said ground. This Court has taken a view that in such circumstances on account of changed decision of the High Court or a Supreme Court, an application u/s 154 of the Act, cannot be entertained by reopening the order of assessment. Therefore, we are of the view that the question of law framed in this appeal is required to be answered in favour of the Revenue and against the assessee.

9. Accordingly, this appeal is allowed.