

(2015) 03 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 37779/2014 (T-AIT)

Krishnagiri Estate

APPELLANT

Vs

The Karnataka Appellate Tribunal and Others

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 03 KAR CK 0051

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : S.P. Bhat, for the Appellant; T.K. Vedamurthy, H.C.G.P., Advocates for the Respondent

Judgement

Aravind Kumar, J.—Heard Sri. S.P. Bhat, learned counsel appearing for the petitioner and Sri. T.K. Vedamurthy, learned HCGP appearing for the respondents.

2. Petitioner is an assessee under the Agricultural Income Tax Act, 1957 (for short, hereinafter referred to as the "Act"). For the assessment year 1995-96 petitioner claimed deduction of Rs. 4,82,998.97/-, which is the interest said to have been paid to Bank contending that it is eligible for being allowed under Section 5(1)(g) of the Act. Assessing Authority, by order dated 22.06.2009-Annexure-A rejected the claim on the ground that petitioner had debited the amount in its account but had not actually paid the amount to Bank and also holding that as per Section 5(1)(g) of the Karnataka Agricultural Income Tax Act, it is only the interest which has been actually paid to the Bank, assessee would be entitled to claim for and same being allowed and not the amount, which had been debited in the books of accounts. Being aggrieved by this order, petitioner filed an appeal before the Joint Commissioner, who by order dated 30.11.2009 affirmed the order passed by the Assessing Authority. Not being satisfied with the same, second appeal was filed before the Karnataka Appellate Tribunal in Appeal No. 206/2010. Appellate Authority also affirmed the order passed by the first Appellate Authority and interest claimed by petitioner for being allowed by way of deduction under Section 5(1)(g) of the Act which had been disallowed by

the assessing officer came to be affirmed.

3. Petitioner filed an application under Section 34(7) of the Act vide Annexure - "D" seeking rectification of the Tribunal's order dated 09.04.2012 (Annexure -"C) contending that there is an error which had crept in the order dated 09.04.2012- Annexure-C passed by the Tribunal, contending inter alia that in Paragraph No. 13 of the Tribunal's order, it had noticed that applicant's claim for deduction was pertaining to the interest amount relating to M/s. Ramagiri Estate and when it was not to be so and factually said deduction claimed also related to petitioner- assessee, viz., M/s. Krishnagiri Estate and this aspect had not been properly considered by the Tribunal. Hence, petitioner sought for rectification of the order of Tribunal. Appellate Tribunal while considering the application filed under Section 34(7) of the Act for rectification has also examined the claim made by the petitioner for allowance of the interest component as to whether such claim is eligible to be allowed as expenditure under Section 5(1)(j) of the Act and found that even on facts, petitioner is not entitled for such allowance and accordingly, rejected the application for rectification vide order dated 27.12.2013, Annexure - "G", which is impugned in the present writ petition.

4. It is the contention of Sri. S.P. Bhat, learned counsel appearing for the petitioner that Tribunal has rejected the application of the petitioner on the grounds which are entirely different and which was not the subject matter of consideration before the Appellate Tribunal in review jurisdiction and as such, it has exceeded in its jurisdiction vested under Section 34(7) of the Act. Hence, he prays for allowing the writ petition and quashing of the impugned order.

5. Per contra, learned HCGP would support the impugned order passed by the Tribunal and would contend that assessment order passed by the Appellate Tribunal affirming the first Appellate Authority's order is revisable under Section 55 of the Act and as such, petitioner has to file a revision petition, if aggrieved by the order and there being no mistake or error apparent on the face of the record in the order dated 09.04.2012 passed by Tribunal, it has rightly rejected the application for rectification by the impugned order. Hence, he prays for dismissal of the writ petition.

6. Having heard the learned advocates appearing for parties and on perusal of the impugned order as well as case papers, it would clearly indicate that before the Authorities, claim of the petitioner was for allowance of interest component which is said to have been debited by it in its books of accounts in a sum of Rs. 4,82,998.97/-, which interest is said to have been paid by the petitioner to Vysya Bank Limited, Chickamagalur Branch and as such, under Section 5(1)(g) of the Act, petitioner claimed deduction of interest on the borrowed amount, which has been debited in its books of accounts. The Assessing Authority, first Appellate Authority and Tribunal have noticed that petitioner is maintaining its account's in cash flow system and not on mercantile basis and as such, it has held that actual proof of payment of interest to the Bank is a necessary pre-condition for allowing the deduction. On this ground claim has been rejected.

7. However, petitioner being aggrieved by the order passed by the Tribunal, in appeal No. 206/2010 filed an application for rectification under Section 34(7) of the Act contending that there is an error apparent on the face of the record, in the order passed by the Tribunal and as such petitioner sought for rectification of said order. Perusal of rectification application, which is at Annexure - "D" would clearly indicate that amongst other grounds raised therein, petitioner had also contended that it is entitled for claiming deduction by relying upon the Judgment of this Court rendered in CRP No. 812/1992. Petitioner's contention is, tribunal has exceeded in its jurisdiction while considering an application for rectification and it was not required to go into merits of the claim. In order to ensure that just claim is not disallowed Tribunal has examined the said claim again on merits and in all probability to ensure that there is complete justice done. In this process tribunal has examined as to whether disallowance of interest component by the authorities is erroneous or not in order to grant relief to the petitioner if it is entitled to such relief. Having undertaken such an exercise, though alien to Section 34(7) of the Act, Tribunal has found on facts that accounting system maintained by the petitioner is cash system and not mercantile system and to claim allowance actual proof of payment has to be established and this was not proved by the petitioner. That apart, Tribunal has noticed from the Certificate issued by the Bank, which has been produced by the petitioner to claim relief under Section 5(1)(g) to arrive at a conclusion that specific entry has not been made in the said Certificate indicating apportionment of interest component claimed by way of deduction by the petitioner relates to the claim made by petitioner- assessee. Perusal of the said certificate would clearly indicate that amount reflected at the bottom of the page is neither countersigned by the Bank or it does not suggest such an entry had been made by the Bank. Hence, tribunal has rejected the claim of the petitioner both on merits and also on the ground that there is no error apparent on the face of the record namely, in its order dated 09.04.2012-Annexure-C.

8. For the reasons aforesaid, I do not find any infirmity in the order dated 27.12.2013- Annexure-G passed by the Tribunal. Hence, writ petition is hereby dismissed as one without merit.

Ordered accordingly.