Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 09/09/2026

(2006) 04 MP CK 0106

In the Madhya Pradesh High Court

Siddhartha Tubes Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Finance (No. 2) Act, 1998 — Section 88, 90
Income Tax Act, 1961 — Section 143, 154, 260A, 263, 80HH

Citation : (2007) 292 ITR 533

Hon'ble Judges : S.K. Kulshrestha, J;Ashok Kumar Tiwari, J

Bench : Division Bench

Judgement

S.K. Kulshrestha, J.—By this appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as, "the Act"), the appellant-assessee assails the order dated 30-5-2002, of the Income Tax Appellate Tribunal, Indore, in Income Tax Appeal No. 216/Ind/2000, pertaining to the assessment year 1995-96. The appeal has been admitted on the following questions of law :

1. Whether under the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that after full and final settlement of the tax arrears u/s 90 of the Finance (No. 2) Act, 1998 in respect of all the matters, the Commissioner of Income Tax had jurisdiction to revise the said assessment order u/s 263 of the Income Tax Act, 1961 ?

2. Whether under the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the Commissioner of Income Tax had jurisdiction to revise the initial assessment order when it was rectified u/s 154 of the Income Tax Act, 1961 and did not survive after having undergone rectification ?" The appellant is a company registered under the Companies Act, 1956, 2 engaged in manufacture of steel pipes, tubes and cold rolled formed sections. Assessment order for the assessment year 1995-96 was passed by the Deputy Commissioner of Income Tax (Assessment), Special Range-2, Indore, on 27-3-1998, u/s 143(3) of the Act. Aggrieved by the said order, the assessee filed an appeal before the Commissioner (Appeals). However, on finding that there

was a mistake in calculation of depreciation, the assessing officer rectified the assessment suo motu under the provisions of Section 154 of the Act, on 28-1-1999.

2. The appellant thereafter filed a declaration u/s 88 of Chapter IV of the Finance (No. 2) Act, 1998, called the "Kar Vivad Samadhan Scheme, 1998", (hereinafter referred to as, "the KVS Scheme"), on 31-12-1999, after rectification of the order u/s 154 of the Act. The declaration was accepted u/s 92 of the KVS Scheme as full and final settlement by the designated authority under the KVS Scheme, vide order dated 25-2-1999 (annexure C-2). The appellant paid tax of Rs. 1,53,774 in accordance therewith. A certificate dated April 28, 1999, as contemplated u/s 90(2) of the KVS Scheme (annexure-D), was duly issued and the matter was finally settled.

3. In view of the above settlement, the appeal pending before the Commissioner (Appeals) was dismissed as infructuous vide order annexure E. However, in purported exercise of the power u/s 263 of the Act, the Commissioner of Income Tax issued notice (annexure Fl) proposing to reopen the assessment.

4. The appellant contends that as a result of rectification of the assessment, it would be the rectified order that would prevail and when the entire material was placed in the declaration made under the KVS Scheme, it was not open to the Commissioner (Appeals) to reopen the issue in purported exercise of the power u/s 263 of the Act. Accordingly, the action was opposed vide annexure D. The respondent,, however, passed an order u/s 263 (annexure H) on March 29, 2000, and set aside the assessment with a direction to recalculate the deductions under Sections 80HH, 80I and 80HHC. The appeal filed to the Tribunal was dismissed in so far as the above claim was concerned.

5. It is in this background that the appellant has approached this court in appeal which has been admitted on the questions formulated hereinabove.

6. Learned counsel for the appellant has invited attention to the Kar Vivad Samadhan Scheme, 1998. Section 90 of the KVS Scheme provides for the time and manner of payment of tax arrear. It reads as follows :

90. Time and manner of payment of tax arrear. - (1) Within sixty days from the date of receipt of the declaration u/s 88, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears :

Provided that where any material particular furnished in the declaration is found to be false, by the designated authority at any stage, it shall be presumed as if the declaration was never made and all the consequences under the direct tax enactment or indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived :

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/siddhartha-tubes-ltd-appellant-hash-…

Provided further that the designated authority may amend the certificate for reasons to be recorded in writing.

(2) The declarant shall pay the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) Every order passed under Sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceedings under the direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show-cause notice against any order or notice giving rise to the tax arrear before any authority or Tribunal or court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn on the day on which the order referred to in Sub-section (2) is passed:

Provided that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the court, furnish proof of such withdrawal along with the intimation referred to in Sub-section (2)." Section 92 restrains the appellate authority to proceed in certain cases. 8 The provision reads as extracted below :

92. Appellate authority not to proceed in certain cases. No appellate authority shall proceed to decide any issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax arrear specified in the declaration and in respect of which an order had been made u/s 90 by the designated authority or the payment of the sum determined under that section :

Provided that in case an appeal is filed by a department of the Central Government in respect of such issue relating to the disputed chargeable expenditure, disputed chargeable interest, disputed income, disputed wealth, disputed value of gift or tax of arrear (except where the tax arrear comprises only penalty, fine or interest), the appellate authority shall decide the appeal irrespective of such declaration.

7. In this connection the judgment of the Apex Court in Killick Nixon Ltd., Mumbai Vs. Deputy Commissioner of Income Tax, Mumbai and Others, has been brought to our notice. In the said case, their Lordships have observed that the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/siddhartha-tubes-ltd-appellant-hash-...

order made by the designated authority u/s 90 of the Scheme is intended to be conclusive in respect of tax arrears and sums payable after determination towards full and final settlement of tax arrears. Upon such declaration being made, tax arrears being determined and paid and certificate issued u/s 92, there is no jurisdiction for the assessing officer to reopen the assessment by a notice u/s 143 of the Income Tax Act, 1961, except where the case falls under the proviso to Sub-section (1) of Section 90 when it is found that any material particular furnished in the declaration is found to be false. Under the proviso to Sub-section (1) it is clear that if any material particular furnished in the declaration is found to be false by the designated authority at any stage, it shall be presumed as if the declaration wats never made and all the consequences under the direct tax enactment or indirect tax enactment under which the proceedings against the declarant are or were; pending shall be deemed to have been revived. The second proviso also gives power to the authority to suitably amend the certificate for reasons to be recorded in writing.

8. Learned senior counsel for the revenue has brought to our notice the order of the Commissioner of Income Tax (annexure H). In the said order, the Commissioner of Income Tax has duly observed that the assessing officer was not satisfied with the explanation of the assessee and had thus recalculated deduction under Sections 80HH and 80I after excluding the profit from export of trading goods. It was, therefore, not on any concealment of information that it was proposed to proceed u/s 263 nor any steps were suggested for cancellation of the declaration as per this provision under the KVS Scheme. Under these circumstances, we are of the considered view that after the certificate having been issued under the KVS Scheme, it was not permissible to revise the said assessment order u/s 263 of the Income Tax Act on the grounds proposed in the impugned order (annexure H) and the Tribunal, therefore, erred in holding to the contrary. In view of our answer to question No. 1, no decision is necessary on question No. 2. Accordingly, this appeal is allowed in the terms indicated hereinabove, with no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/siddhartha-tubes-ltd-appellant-hash-…