

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-12-2025

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

TCA No. 602 of 2013

Commissioner of Income-tax
Coimbatore.

..Appellant(s)

Vs

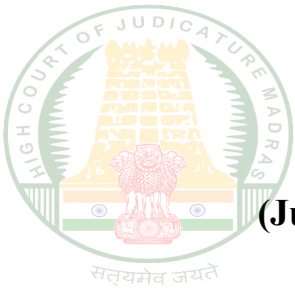
M/s Eastman Exports Global Clothing Pvt Ltd.,
Door No.10, 12 Kumar Nagar South,
Tirupur 641 003
PAN: AACCC0952E

..Respondent(s)

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 22.11.2012 in ITA.No.1108/Mds/2012.

For Appellant(s): Mr.P.E.R.Mangala Suvigaran

For Respondent(s): Mr.T.Banusekar
for Mr.R.Sivaraman



Judgment

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

WEB COPY The revenue is in appeal as against order dated 22.11.2012, passed by the Income Tax Appellate Tribunal ('ITAT'/'Tribunal'). The appeal before the Tribunal was at the instance of the assessee/respondent as against order dated 27.03.2012 passed by the Commissioner of Income Tax (CIT) under Section 263 of the Income Tax Act, 1961 (in short 'Act').

2.The proceedings relate to Assessment Year (AY) 2007-08 in respect of which the assessee had filed a return of income that culminated in an order of assessment dated 18.12.2009. A copy of the assessment order is produced before us. It does not contain anything to indicate that the assessing authority had taken note of the scheme of demerger sanctioned by this Court in Company Petition Nos.146 to 149 of 2008 and Company Petition Nos.201 and 202 of 2009 dated 28.07.2008 and 15.09.2009.

3.The CIT hence issued a show cause notice dated 14.02.2012, calling for a response from the assessee as to the treatment of unabsorbed depreciation and unabsorbed business losses of three entities (i)M/s.Cotton Base Clothing India Private Limited; (ii)M/s.Tangible Textiles Private Limited and; (iii) Essorpe Mill Limited, in the computation of income of the assessee.

4.The CIT proceeded on the basis that the arrangement qua the parties was one of amalgamation, and that the carry forward of unabsorbed business losses and depreciation was incorrect in terms of Section 72A(2) of the Act that



required the amalgamating entities to have been in existence for a minimum of three years prior to amalgamation.

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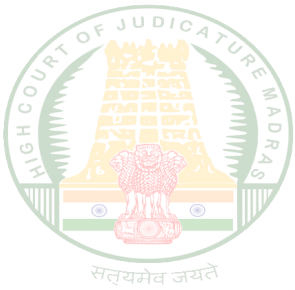
5.The assessee responded pointing out that in fact, the arrangement had been one of demerger and hence, the provisions of Section 72A(2) would be inapplicable. The applicable provisions in the context of demerger, would be Section 72A(4) of the Act, that contained no condition in regard to the minimum period of existence of the demerged entities. Hence the very basis of the notice was incorrect.

6.An order came to be passed by the CIT on 27.03.2012 where the reply of the assessee/respondent has been noted. However, instead of answering the point put forth by the assessee, an order had come to be passed under Section 263 merely remitting the issue to the assessing officer for examination. The order was carried in appeal before the Tribunal by the assessee, and set aside vide order dated 22.11.2012, aggrieved with which, the present Tax Case Appeal has been filed by the Revenue.

7.The following substantial questions of law have been admitted on 07.11.2013:

‘1.Whether in law and in the facts and circumstances of the case, the Tribunal was right in holding that the CIT has erred in revising the assessment order in the case of the assessee as erroneous prejudice to the interests of revenue?’

2. Whether in law and in the facts and circumstances of the case, the Tribunal was right in holding that the CIT had



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travelled beyond the reasons stated in the show cause notice issued by him?

3. Whether in law and in the facts and circumstances of the case, the Tribunal was justified in allowing the appeal of the assessee in holding that the jurisdiction of the CIT is confined to the reasons stated in the notice under Section 263?

4. Whether in law and in the facts and circumstances of the case, the Tribunal is justified in allowing the appeal of the assessee when the issue involved in the case of the assessee are amalgamation as well as demerger?

5. Whether in law and in the facts and circumstances of the case, the Tribunal is justified in allowing the appeal of the assessee without giving a finding as to whether the assessee has adhered to the provisions of Section 2(1B) of the Act ?'

8.We have heard the detailed submissions of Mr.P.E.R.Mangala Suvigaran, learned Junior Standing Counsel for the Income Tax Department and Mr.T.Banusekar, learned counsel for Mr.R.Sivaraman, learned counsel for the assessee/respondent and also perused the documents produced before us.

9.Section 263 provides for suo motu revision by the CIT upon satisfaction of two concurrent conditions, that the order sought to be revised is both erroneous and prejudiced to the interests of the revenue. In *Malabar Industrial Co. Ltd. v. C.I.T.* [2000] 243 ITR 83, the Supreme Court has held that the twin conditions under Section 263 have to be satisfied concurrently. We are hence called upon to test whether the order of the CIT addresses an issue that is both erroneous as well as prejudicial to the interests of revenue.

10.This Court has, vide order dated 28.07.2008 in Company Petition



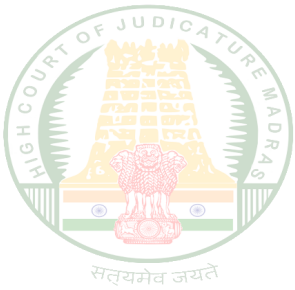
Nos.146 to 149 of 2008, sanctioned a scheme of demerger vesting the manufacturing division of Tangible Textiles Private Limited with Eastman Exports Global Clothing Private Limited and the manufacturing division of Cotton Base Clothing India Private Limited with Eastman Exports Global Clothing Private Limited. Under order dated 15.09.2009 in Company Petition Nos.201 and 202 of 2009, the Court has sanctioned a scheme of demerger between Essorpe Mill Limited and Eastman Exports Global Clothing Private Limited.

11.Hence, the arrangement sanctioned qua the parties is not one of amalgamation as defined under Section 2(1B) of the Act, but one of demerger per under Section 2(19AA) of the Act. That is the fundamental error committed by the CIT that has been pointed out by the assessee in its reply to the notice u/s 263 of the Act.

12.Section 72A deals with the carry forward and set-off of accumulated loss and unabsorbed depreciation elements in amalgamation or demerger, etc. Section 72A(2) deals with the treatment of accumulated loss and depreciation and how they are to be carried forward in the cases of amalgamated companies and reads as follows:

'(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless-

(a) the amalgamating company-



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- (i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;*
- (ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;*

(b) the amalgamated company-

- (i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;*
- (ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;*
- (iii) fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.'*

13. The carry forward under Section 72A(2) is conditional upon the amalgamating company having been engaged in the business in which the accumulated loss occurred or depreciation remained unabsorbed, for three or more years. The three entities in this case i.e. Tangible Textiles Private Limited, Cotton Base Clothing India Private Limited and Essorpe Mill Limited have been in business for less than three years.

14. However, this would not be fatal to the claim of carry forward, since the applicable provision in this case is not Section 72A(2), but Section 72A(4) that reads as follows:



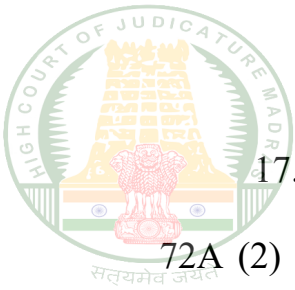
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.....
(a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;

(b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.'

15. On a comparison of sub-sections (2) and (4) of Section 72A extracted supra, we find that there is no condition under sub-section (4) of Section 72A as unlike in sub-Section (2) of Section 72A. This has been pointed out by the assessee in its reply and clearly, the reply has engaged the attention of the CIT as in the order under Section 263, he makes mention of 'demerger' as well 'amalgamation'.

16. The assessee has furnished the orders passed by the Company Court indicating the nature of the arrangement qua the parties. It was thus incumbent upon the CIT to have identified the 'error' in the order of assessment prior to directing intervention by the assessing officer. Alternatively, and assuming that he still harboured a doubt in regard to the arrangement qua the parties, he ought to have articulated those doubts in the order u/s 263 instead of which the matter was simply placed before the assessing officer for enquiry.

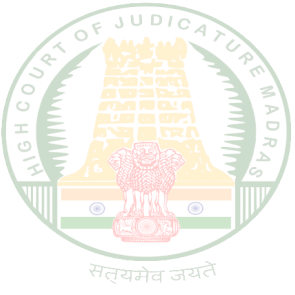


17. The stand of the assessee pointing out the difference between Section 72A (2) and (4) are not lost on the CIT as the contents of the reply are seen reflected in the Section 263 order. In light of the language of Section 72A and the absence of a condition under sub-section (4) thereof, there does not appear to be any error per se in order of assessment dated 18.12.2009 and the direction under order dated 27.03.2012 u/s 263 of the Act amounts to a mere roving enquiry. The condition relating to 'error' has not been satisfied in the present case, and in light of the same, we answer the questions of law in favour of the assessee and adverse to the revenue. This appeal is dismissed. No costs.

(A.S.M.,J.) (M.S.K.,J.)
02-12-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
vs

To
The Income Tax Appellate Tribunal
Madras 'C' Bench,
Chennai.



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TCA No. 602 of 2



**DR.ANITA SUMANTH J.
AND
MUMMINENI SUDHEER KUMAR J.**

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