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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-12-2025

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

**THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

TCA No. 394 of 2012

Jasmine Towels (P) Ltd.,
125, Aruppukottai Road, Perungudi,
Madurai 625022

..Appellant(s)

Vs

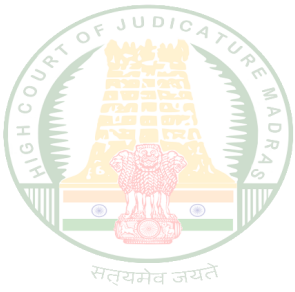
Asst. Commissioner Of Income
Tax Circle-I, Madurai

..Respondent(s)

Prayer: Appeal filed under Section 260A of Income Tax Act, 1961
against order of the Income-Tax Appellate Tribunal 'D' Bench,
Chennai in I.T.A.No.922(Mds)/2012 dated 20.07.2012 for the
assessment year 2004 – 2005.

For Appellant(s): Mr.Athiban Vijay.A.K.
for Mr.Hari Prashanth

For Respondent(s): Mr.V.Mahalingam,
Senior Standing Counsel



Judgment

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

This appeal is filed by the assessee challenging concurrent orders of assessment, first appeal and second appeal upholding the assumption of jurisdiction under Section 147 of the Income Tax Act, 1961 (in short 'Act') for re-assessment for Assessment Year (AY) 2004-05.

2. The substantial question of law admitted on 11.12.2012 relates to re-assessment and reads as follows:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the contention of the assessee that the reopening based on change of opinion was bad in law?”

3. The assessee filed a return of income claiming relief under Section 80 HHC of the Act. The return was taken up for scrutiny and an assessment completed on 29.12.2006 under Section 143(3) of the Act. The assessment order is wholly silent as to the deduction under Section 80HHC, and nowhere does the Assessing Authority refer to the computation of 80 HHC. Neither does he mention anywhere that he



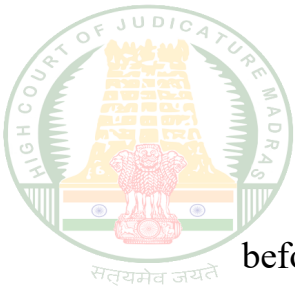
had discussed with the assessee the details necessary and relevant to the computation of deduction under Section 80 HHC.

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4. The details of notices under Section 143(2) and questionnaires under Section 142(1) are also not present in the assessment order. This is truly an instance where the assessment order is silent as to any discussion in relation to deduction under Section 80HHC.

5. In these circumstances, notice under Section 148 was issued on 31.03.2009 proposing to re-assess the income for AY 2004-05. There is a letter on record dated 25.04.2009 where the assessee states that the return of income originally filed may be taken as response to the notice under Section 148 and seeking a copy of the reasons for re-assessment. An acknowledgement dated 27.04.2009 is also placed on record to show that that letter was filed before the Assessing Officer.

6. Despite the same, the assessment came to be completed on 13.10.2010 wherein the Assessing Officer states that there was no response to Section 148 notice. However, in the order of re-assessment, the Assessing Authority refers to the discussion had with the Chartered Accountant of the assessee, including on the question of excess claim under Section 80HHC which is the basis on which re-assessment had been initiated.



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7. The statement of fact and the grounds filed by the assessee before the first appellate authority are placed on file, wherein the assessee has not taken a ground in respect of non-furnishing of reasons. Hence, it is too late in the day for the assessee to pursue that line of argument now. The sole ground taken before the first appellate authority was with regard to assumption of jurisdiction under Section 147 and the eligibility for relief under Section 80 HHC as computed by it in the original return of income.

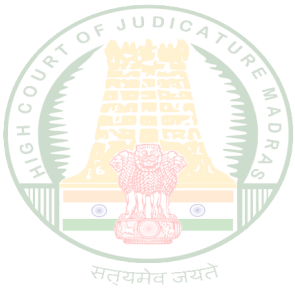
8. In the appellate order, the reasons are extracted at paragraph 5.2. as follows:

‘5.2 It could be noted from records that the Assessing Officer had recorded following reason for re-opening of Assessment:

“The Assessee Company Manufacture and exporter of terry towels admitted total income of ₹.28,33,890/- after claiming deduction u/s.80HHC of ₹.35,45,309/-.

*It is seen from the computation of deduction claimed u/s.80HHC of the IT Act, the company omitted the factor of Export Turnover / Total Turnover * Adjusted Profit of Business, as the same resulted in negative figure. Since the deduction u/s.80HHC has to be allowed on net of two factors, (i.e. Export Turnover/Total Turnover * Adjusted profit of business + Export Turnover / Total Turnover * 90% of Export incentive)*

The Assessee has claimed excess deduction u/s.80HHC to the tune of ₹.17,33,542/-. I have reasons to believe that income had escaped assessment.”



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9. In summary, the assessee was unsuccessful, as by order dated 09.01.2012, the appeal was dismissed upholding the aspect of assumption of jurisdiction. There is no discussion in the first appellate order on the merits of the matter, and the assessee has not challenged such non-consideration before the Income Tax Appellate Tribunal (in short 'Tribunal').

10. The only ground raised before the Tribunal relates to assumption of jurisdiction and hence, the question of computation of relief under Section 80HHC, has attained finality at the stage of the appeal.

11. The assessee was unsuccessful before the Tribunal as well, which upheld the assumption of jurisdiction under Section 147 dismissing the appeal by order dated 20.07.2012, as against which, the present Tax Case (Appeal) has been filed.

12. Mr.Athiban Vijay, learned counsel for the appellant/assessee, submits that the impugned re-assessment proceedings are based wholly on a change of opinion and is hence bad in law. He also submits that the return of income filed contains the computation of deduction under Section 80 HHC, and it was only upon consideration of the same that



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the Assessing Authority had accepted the relief claimed. Hence, there was no new or tangible material brought on record in the re-assessment proceedings vitiating the assumption of jurisdiction under Section 147 of the Act.

13. In support of his contention, he relies on a judgment of the Supreme Court in *Income Tax Officer Ward No.16(2) V. M/s. TechSpan India Private Ltd. & Anr.*¹ and of the Gujarat High Court in *Hareshkumar Bhupatbhai Panchani V. Income Tax Officer, Ward 3(3) (1) and another.*²

14. Mr. Mahalingam, learned Senior Standing Counsel for the Department, for his part, would point out that there has been absolutely no consideration of the claim under Section 80HHC by the Assessing Officer at the original instance. He relies on Explanation (2) to Section 147, as it stood then, as per which, the grant of excessive relief was a situation which enabled the Assessing Authority to issue a notice under Section 148 for re-assessment.

15. He would hence submit that there is no error in the assessment order, as confirmed in first and second appeals. Hence the

¹Civil Appeal No.2732 of 2007 dated 24.04.2018 before Supreme Court of India

²2024 SCC OnLine Guj 3674



substantial question of law deserves to be answered in favour of the revenue.

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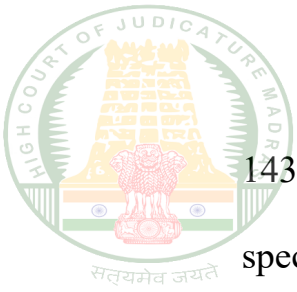
16. We have heard both learned counsel and perused the material papers as well as the cases cited.

17. The original order of assessment is wholly silent in regard to the claim under Section 80HHC. Normally, when an order of assessment is passed under Section 143(3) of the Act, there is a presumption that the issues raised for consideration in the return of income have been duly taken note of by the Assessing Officer.

18. In *CIT V. Kelvinator of India Limited*³ a Full Bench of the Delhi High Court, referring to Section 114(e) of the Evidence Act states that *it is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed.*

19. Hence and normally, in a case involving a scrutiny assessment, the presumption would be in favour of the Assessing Authority having applied his mind to the issues that arise from the return of income filed, if supported by some evidence of discussion pre-assessment on those issues, by issuance of notice under Section

³256 ITR 1



143(2) or questionnaire under Section 142(1) of the Act, identifying specific issues and calling for a response from the assessee.

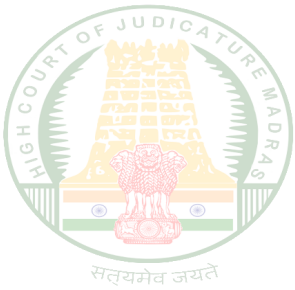
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20. In this case, the assessment order is singularly silent with regard to any such correspondence with the assessee, and is wholly non-speaking with regard to the claim under Section 80HHC. Had the Assessing Officer mentioned the claim under Section 80HHC in either the body of assessment or in the computation, there would have been something for us to base the presumption that the claim has not been wholly lost sight off, by the Assessing Authority. However, the order of assessment passed in the present case does not indicate any such application of mind.

21. In such circumstances, we agree that Explanation (2) to Section 147, extracted below, would apply to the facts and circumstances of the present case.

Income escaping assessment.

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section



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and in sections 148 to 153 referred to as the relevant assessment year) :

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

.....

(c) where an assessment has been made, but—

*(i) income chargeable to tax has been under-assessed ;
or*

(ii) such income has been assessed at too low a rate ; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

22. In the present case though an assessment under Section 143(3) has been made, the income is admittedly subject to excessive relief under Section 80HHC, as the computation in the assessment has attained finality. Hence, the assumption of jurisdiction is seen to be justified.

23. Coming to the decisions cited, both, *Tech Span India Private Ltd. & Anr.*⁴ and *Hareshkumar Bhupatbhai Panchani*⁵, contain detailed reference to correspondence prior to completion of original assessment under Section 143(3) in relation to those issues identified by the Assessing Officer as requiring discussion.

⁴Foot Note Supra (1)

⁵Foot Note Supra (2)



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24. In the case of *Tech Span India Private Ltd. & Anr.*⁶, the Assessing Authority has issued a notice dated 09.03.2004 on the question of deduction under Section 10A of the Act, the reply of the assessee has been received and it is only thereafter that the assessment was framed.

25. Then again, in *Hareshkumar Bhupatbhai Panchani*⁷ notice under Section 143(2) dated 18.11.2017 and questionnaire under Section 142(1) dated 08.11.2018 had been issued to that assessee, calling for a working of capital gain, and the registered deed of purchase to support the claim for deduction under Section 54 of the Act. The details had, vide letter dated 26.11.2018, supplied the working of capital gain, proof for deduction under Section 54 of the Act and the registered purchase agreement to the office.

26. Hence the original orders of assessment in those cases had been preceded by a detailed discussion which indicated application of mind and formation of opinion by those Assessing Officers, which is absent in the present case. The decisions cited are hence distinguishable.

⁶Foot Note Supra (1)

⁷Foot Note Supra (2)



27. In light of the above discussion, the substantial question of law is answered against the assessee and in favour of the Revenue.

This Tax Case (Appeal) is dismissed. No costs.

(A.S.M.,J.) (M.S.K.,J.)

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Index: Yes

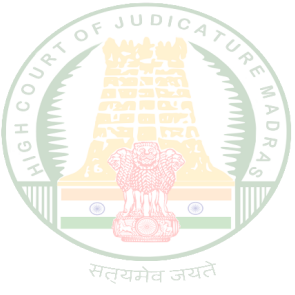
Speaking order

Neutral Citation: Yes

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To

1. The Asst Commissioner Of Income Tax
Circle-I, Madurai.
2. The Income-Tax Appellate Tribunal 'D'
Bench, Chennai.



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