HIGH COURT OF MADHYA PRADESH

Commissioner of Income-tax-II

v.

Indira Exports (P.) Ltd.*

SHANTANU KEMKAR AND MOOL CHAND GARG, JJ.
IT APPEAL NO. 24 OF 2012
SEPTEMBER 26, 2013

ORDER

1. Shri R.L. Jain, learned Senior Counsel with Ms. VeenaMandlik, learned counsel for the appellant/Revenue.

2. Heard on the question of admission.

3. This order shall also govern disposal of Income Tax Appeals No.22 and 25 of 2012, as the facts and the question of law raised in all the three cases are identical.

4. This appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the Act) is filed against the common order dated 31.10.2011 passed by the Income Tax Appellate Tribunal, Bench at Indore (for short, the Tribunal) in Income Tax Appeal No.391/Ind/2007, Income Tax Appeal No.338/Ind/2007 and Income Tax Appeal No.294/Ind/2006.

5. Challenging the assessment order passed under Section 147 read with Section 143 (3) of the Act, which was affirmed by the Commissioner of Income Tax (Appeal) vide order dated 30.03.2007, the respondent / assessee filed the aforesaid appeals before the Tribunal. The grievance of the assessee was that the initiation of the proceedings under Section 147 of the Act and the consequent assessment order is bad in law.

6. According to the assessee, the entire issue was earlier dealt with by the CIT (A) in his order under proceedings under Section 263 of the Act, after calling report from the Assessing Officer (AO). The matter and the question involved having been examined by the higher authorities, it was not open for review by the lower authority. The respondent / assessee raised the question before the Tribunal that once an order under Section 263 of the Act was passed, whether, it was open for the AO to re-open the issue under Section 147 of the Act. The Tribunal dealt with the matter extensively and after considering the findings recorded by the CIT (A) in the proceedings under Section 263 of the Act, in which it was held that the claim of deduction under Section 80 HHC of the Act has been correctly made by the assessee, had observed that it was not permissible for the AO to initiate proceedings under Section 147 of the Act. The Tribunal, while deciding the matter in favour of the assessee, in paragraphs 11, 12 and 13 has observed, thus: —

> "11. In this order, the ld. CIT has observed that the issue with regard to deduction u/s 80HHC has been decided by the Tribunal in the case of *CIT* v. *AlineSolvex Ltd.* [2003] 259 ITR 719 in favour of the assessee and against that decision, the Department has moved to the High Court. He further observed that Hon'ble High Court has dismissed Revenue's appeal and later on Department moved to the Hon'ble Supreme Court through SLP, which has also been dismissed by the Hon'ble Supreme Court. Thus, the issue with regard to claim of deduction u/s 80HHC stands finally settled. The ld. CIT further observed that decision given in the case of *CIT* v. *Alpine Solvex Ltd.* [2003] 259 ITR 719 is the law and now there is no scope for remedial action whatsoever after the decision of Hon'ble Supreme Court. He further observed that taking any so called remedial action now may tantamount to contempt of the Hon'ble Apex Court. Thereafter, considering the report of the AO dated 07.02.2002, the ld. CIT dropped the proceedings initiated with respect to claim of deduction u/s 80HHC. The reasons given for

reopening relate to claim of deduction u/s 80HHC and in the reasons so recorded, the reliance was placed on the decision of Tribunal in the case of Alpine Solvex Ltd. ITA No.510 & 1026/Ind/1997 order dated 26th February, 1999.

12. Thus, it is clear from the order of the ld. CIT u/s 263 that the assessee's claim of deduction u/s 80HHC was correct. The issue with regard to deduction u/s 80HHC having been examined by the Higher Authorities cannot be subject matter of review by the lower authorities. ITAT Bangalore 'A' Bench in the case of *Asea Brown Boveri Limited* v. *Addl. CIT*, 2010-TIOL-190-ITAT-BANG, replying on the decision of Madras High Court in the case of Ramchandra Hatcheries, 305 ITR 117 observed that the AO has no jurisdiction to reopen the assessment u/s 147, so as to circumvent the order of the CIT which has become final. As there was no new facts coming to the notice of the AO other than the facts known to the Department while initiating the proceedings u/s 263, the reopening of assessment was not justified on the same facts, which were already decided by the CIT in his order u/s 263.

13. In the instant case also, we found that the issue with regard to claim of deduction u/s 80 HHC which has been dealt with by the ld. CIT by issuing notice u/s 263 was dropped after considering AO's report dated 07.10.2002 and it was held that considering this report and the legal position there is no reason to disallow any portion of the deduction allowed u/s 80HHC of the Income Tax Act, 1961, for all the three years under consideration. As the issue has already been examined and held in favour of the assessee by that ld. CIT on the basis of report of the AO, we do not find any merit in the initiation of proceedings u/s 147 by the same AO. The reopening of assessment on the same reasons as were recorded for initiation of proceedings u/s 263 is not permissible, particularly in the absence of any new material on the basis of reasonable belief that income has escaped assessment."

7. Having regard to the aforesaid clear position of law, based upon the judgment of the Supreme Court, we are of the view that the Tribunal has committed no error in holding that there was no merit in the initiation of the proceedings under Section 147 of the Act. In these circumstances, no ground / substantial question of law is made out to interfere into the order passed by the Tribunal.

8. Accordingly, the aforesaid three appeals deserve to be and are hereby dismissed.

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*In favour of assessee.

†Arising out of order of ITAT in IT Appeal Nos. 391, 338 (Indore) of 2007 and 294 (Indore) of 2006, dated 31-10-2011.