Cit Vs. G. Ramasamy

Cit Vs. G. Ramasamy

SooperKanoon Citation : sooperkanoon.com/839534

Court : Chennai

Decided On : Jul-02-2007

Reported in : [2007]293ITR513(Mad)

Judge : P.D. Dinakaran and ;P.P.S. Janarthana Raja, JJ.

Appellant : Cit

Respondent : G. Ramasamy

Disposition : Case allowed

Judgement :

P.P.S. Janarthana Raja, J.

1. This appeal is filed under Section 260A of the Income Tax Act, 1961 by the revenue against the order of the Income Tax Appellate Tribunal, Chennai Bench 'C', Chennai in I. T. A. No. 831/Mds/2001, dated 25-9-2003. On 21-6-2004, this Court admittedthe appeal and formulated the following substantial questions of law:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was eligible for deduction under Section 80-O for the assessment year 1998-99, when the payment received from the foreign company was not in consideration for the use outside India of any

patent, invention, design or trade mark ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income has been assessed under the head 'Salary' ignoring the fact that the Commissioner (Appeals) has directed that the income should be assessed under the head 'Profits and gains of business or profession' and such assessment under the head 'Salaries' is not a hurdle in the grant of deduction under Section 80 -O of the Act ?

2. The facts leading to the above substantial questions of law are as under:

3. The assessee is an individual. The relevant assessment year is 1998-99 and the corresponding accounting year ended on 31-3-1998. The assessee filed the return of income on 31-12-1998, admitting the income of Rs. 1,64,100. Later, the case was taken up for scrutiny and notice was issued under Section 143(2) of the Income Tax Act ('the Act' hereinafter referred to as). The assessing officer completed the assessment under Section 143(3) of the Act determining the total income at Rs. 10,23,620. While completing the assessment, the assessing officer disallowed the claim of the assessee under Section 80-O of the Act. Aggrieved by the order, the assessee filed an appeal to the Commissioner (Appeals). The Commissioner (Appeals) dismissed the appeal. The assessee raised an alternative plea before the Commissioner (Appeals) for deduction under Section 80RR of the Act and the same was also dismissed by the Commissioner (Appeals). Aggrieved, the assessee filed an appeal to the Income Tax Appellate Tribunal ('the Tribunal' in short). The Tribunal allowed the claim of the assessee under Section 80-O of the Act. Hence the alternative plea made by the assessee with regard to deduction under Section 80RR was not considered on the ground that the assessee had succeeded in the main claim under Section 80-O of the Act.

4. Learned senior standing counsel appearing for the revenue submitted that the Tribunal was wrong in granting deduction under Section 80 -O of the Act ignoring the amendment made to Section 80-O by the Finance Act, 1997 with effect from 1-4-1998. As per the amended provision, the assessee is not entitled to relief. The assessee is only a consultant in the Manpower Management and hence he is not entitled to deduction under Section 80-O of the Act.

5. Learned Counsel appearing for the assessee fairly stated that as per the 5 amended Act, with effect from April 1, 1998, the assessee is not entitled to relief under Section 80-O of the Act. Counsel further submitted that the assessee had raised an alternative plea before the Tribunal that he is entitled to relief under Section 80RR of the Act, and requested the court to remand the matter to the Tribunal to consider the same.

6. Heard counsel. In view of the amendment made to Section 80-O by the Finance Act, 1997 with effect from April 1, 1998, the assessee is entitled to deduction only in respect of the income received by him from the Government of a foreign State or foreign enterprise in consideration for the use outside India of any patent, invention, design or registered trade mark. This amendment was not at all considered by the Tribunal and counsel appearing for the assessee fairly stated that in view of the amendment, the assessee is not entitled to relief under Section 80-O of the Act. In view of the same, we answer the questions in favour of the revenue and against the assessee. Accordingly, the tax case is allowed. No costs.

7. In respect of the alternative submission made by the assessee for deduction under Section 80RR of the Act, the Tribunal has not considered in view of the grant of relief to the assessee under Section 80-O of the Act. In view of answering the questions, that the assessee is not entitled to relief under Section 80-O of the Act, we direct the Tribunal to consider the alternative plea as to whether the assessee is entitled to relief under Section 80RR of the Act or not, and pass orders in accordance with law, after giving opportunity to the assessee.