

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) No.144 OF 2003

Commissioner of Income Tax,
Chennai.

Appellant

-vs-

M/s.TTK Pharma Limited,
Chennai.

Respondent

Appeal against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 18.03.2003, in ITA No.718/Mds/1995 against IT Appeal No. 197/94-95 dated 6.2.95 on the file of the Commissioner of income Tax (A) I Madras-34 against PAN/GIR.No 47-oo40cZ-6934/11-T on the file of the Deputy Commissioner of Income tax Special Range III, Madras -34.

For appellant : Mr.J.Narayanaswamy
For respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Ayyar

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is by the revenue, challenging the order of the Tribunal, rejecting the plea on question of rectification, on the basis of the decision of the Supreme Court delivered subsequently in Karnataka Small Scale Industries Development Corporation Ltd. v. CIT, reported in (2002) 258 ITR 770.

2. This appeal relates to the assessment year 1989-90. The total income of the assessee was assessed under Section 115 J of the Income Tax Act, finding that the correct loss was to be assessed at Rs.16,02,388/- as against the relief granted at Rs.41,71,492/-, the Assessing Authority issued notice under Section 154 of the Act, to pass an order thereby rectifying the error pertaining to the loss carried forward. The order passed was set aside originally in appeal, directing a remand to give a reasonable opportunity to the assessee to state its objection. Thereafter, the Officer passed an order once again to hold that the

assessee was not entitled to carry forward the amounts assessed under Section 115 J for set off for the subsequent years and hence the amount of Rs.21.00 lakhs and odd alone would be carried forward as unabsorbed depreciation to be set off in the subsequent years. The first appellate authority came to the conclusion that the view of the assessing authority was justified by the provisions of Section 115 J, sub-section (2) and, consequently, it confirmed the order of the authority.

3. On appeal by the assessee, the Tribunal noted that admittedly Assessing Officer in his original assessment allowed a sum of Rs.25,77,404/- being the amount of loss to be carried forward that in the proceedings under Section 154, the assessing authority sought to withdraw the benefit. Noting the fact that the judgment of the Supreme Court on the issue was settled only in the year 2002 reported in 258 ITR 770, and hence saw a debatable issue on it when 154 proceedings were taken, the Tribunal rejected the stand of the revenue on the question of jurisdiction only, to uphold the claim of the assessee. Aggrieved of this, the revenue is on appeal before this Court.

4. It may be seen that the proceedings for rectification was made as early as 1993. Admittedly, on the date when the proceedings were taken, the views of the Courts in the country were not uniform. Given the scope of Section 154 that an arguable issue would not come for rectification of a mistake, the appellant herein cannot go for rectification of an error, which is arguable issue, hence, the proceedings are totally unsustainable.

5. A perusal of Section 154 shows that the intervention or an assumption of jurisdiction under Section 154 only to correct an error was a mistake, which was apparent and not where a debatable issue could be considered. Considering the admitted position that the issue itself was settled long thereafter, the question of accepting the assumption of jurisdiction does not arise.

6. Given the scope of Section 154 and on the admitted facts, we do not find any reason to interfere with the order of the Tribunal. Consequently, the appeal fails and the same is dismissed. No costs.

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Assistant Registrar,
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Sub Assistant Registrar.

To

1. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL,
MADRAS BENCH B RAJAJI BHAVAN BESANT NAGAR,
CHENNAI-90.

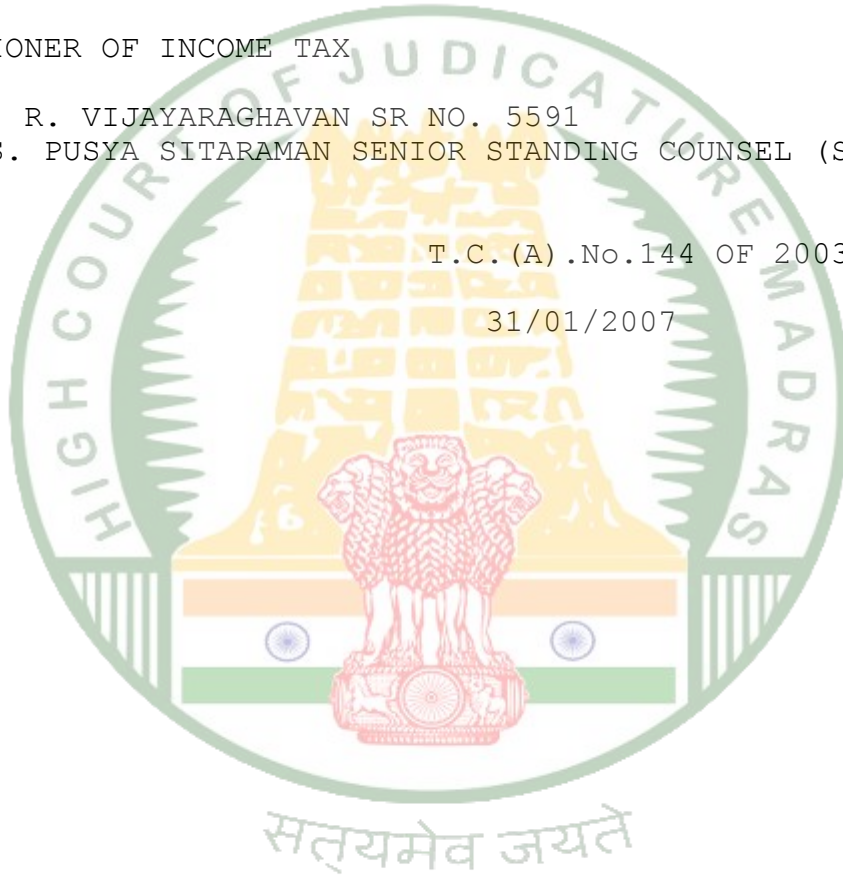
2. THE COMMISSIONER OF INCOME TAX
APPEALS I CHENNAI -034

3. THE DEPUTY COMMISSIONER OF
INCOME TAX, SPECIAL RANGE -III, MADRAS -34

4. THE COMMISSIONER OF INCOME TAX
CHENNAI
+ ONE CC TO MR. R. VIJAYARAGHAVAN SR NO. 5591
+ ONE CC TO M/S. PUSYA SITARAMAN SENIOR STANDING COUNSEL (SR 6170)
RL (co)
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T.C. (A) .No.144 OF 2003

31/01/2007



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