

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2445/2011

JOHNSON G. OMMEN

APPELLANT(S)

VERSUS

THE COMMISSIONER OF INCOME TAX (CENTRAL), KOLLAM

RESPONDENT(S)

WITH

C.A. NOS. 2446-2447/2011

O R D E R

Being aggrieved by the order of remand passed by the Kerala High Court in ITA Nos.1508, 1757 and 1760 of 2009 by judgment dated 23.03.2010, the assessee(s) has filed these appeals.

We have heard learned counsel for the appellant(s) and learned counsel for the respondent-Department.

During the course of submissions, our attention was drawn to a judgment of this Court in the case of Commissioner of Income Tax-5 and Anr. vs. Avani Exports and Anr. [(2016) 16 SCC 741]. It was submitted that the amendments made to Section 80-HHC(3) of the Income Tax Act, 1961 (for short "the Act") by the Taxation laws (Second Amendment) Act, 2005 with retrospective effect i.e. with effect from 01.04.1992 was assailed by certain categories of exporters, namely, those exporters who had less than Rs.10 crores of export per year and those exporters whose export turnover was more than Rs.10 crores per annum before the High Court. It was submitted that the High Court in the said case had held that the twin conditions appended in third and fourth proviso to Section 80-

HHC(3) had been severed and declared to be *ultra vires* whereas, the rest of the amendments were held to be valid. The order of the High Court in the aforesaid cases was the subject matter of special leave petitions before this Court in Avani Exports (supra). This Court while considering the aforesaid judgment observed that the order of the High Court had to be substituted only to the extent and in the following manner:

“Having seen the twin conditions and since Section 80-HHC benefit is not available after 01.04.2005, we are satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the judgment in appeal.”

Having regard to the aforesaid judgment, the learned counsel for the respective parties submitted that these appeals could accordingly be disposed of.

In the circumstances, we have considered the factual matrix of these appeals. The question that fell for consideration before the High Court was, whether, the Revenue was justified in holding that the retrospective amendment to Section 80-HHC(3) of the Act entitled the Assessing Officer to invoke the powers of rectification under Section 154 of the Act to bring the assessment orders in tune with the amendment.

The appellant-assesseees are cashew exporters who had claimed deduction of income from export of cashew kernels under Section 80-HHC(3) of the Act. The Taxation Laws (Second Amendment) Act, 2005

introduced an amendment to Section 80-HHC by introducing various provisos with retrospective effect from 01.04.1992. In one case, the original assessment had been completed and in another case assessment was completed under Section 143(1). The same were rectified under Section 154 to make the assessments in the context of grant of relief under Section 80-HHC consistent with the amendments to the provisos with retrospective effect. The rectification orders issued under Section 154 were assailed in appeal before the CIT (Appeals). The CIT (Appeals) turned down the challenge against the validity of rectification orders but the Tribunal had allowed the appeals by holding that the assessment could not be rectified based on retrospective amendment.

Thereafter, appeals were filed before the High Court assailing the order of the Tribunal.

The High Court observed that the Taxation laws (Second Amendment) Act, 2005 which had introduced Section 80-HHC(3) and certain provisos to Section 80-HHC(3) with retrospective effect from 01.04.1992 would grant the benefit to the said assesseees with retrospective effect on the fulfilment of the twin conditions which are extracted as under:

“(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than he rate of credit allowable under the Duty Entitlement Pass Book

Scheme, being Duty Remission Scheme.”

The High Court while considering the amendment to Section 80-HHC(3) by the Taxation Laws (Amendment) Act, 2005 with retrospective effect from 01.04.1992 and the fact that the assessments pertained to the years 1999-2000 and 2000-2001, although the assessments and reassessments were completed, held that the power of rectification under Section 154 of the Act was rightly exercised by the Assessing Officer. Therefore, the appeals filed by the Revenue were allowed and consequently the matter(s) were remanded to the Tribunal for reconsideration of the appeals on other grounds.

It is the aforesaid remand order which is assailed in these appeals.

This Court in Avani Exports and Anr. (supra) held as under:

“5. We find that in essence the High Court has quashed the severable part of third and fourth proviso to Section 80-HHC(3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisos by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:

“Having seen the twin conditions and since Section 80-HHC benefit is not available after 1-4-2005, we are

satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the Judgment in appeal.""

This position has been clarified by this Court in Union of India vs. Paliwal Overseas Private Limited [(2016) 16 SCC 697] by holding as under:

"2. The only question of law to be decided is whether Section 80-HHC of the Income Tax Act, 1961 as amended in 2005 is prospective in operation. It has since been settled by this Court that the same is only prospective.

3. As far as issue relating to turnover below 10 crores and above 10 crores is concerned, the same has already been answered by this Court in the recent order dated 30-3-2015 in CIT v. Avani Exports making it clear that it applied to both categories. In terms of the said order, these appeals are also disposed of. Order dated 30-3-2015, as mentioned above, shall form part of this judgment."

Having regard to the fact that this Court accepted the judgment of the High Court impugned therein except to the aforesaid

extracted portion wherein this Court stated that the twin conditions under Section 80-HHC(3) which have been quashed by the High Court would apply to both categories of exporters having a turnover above Rs.10 crores and those having a turnover below Rs.10 crores and sustaining the impugned judgment of the High Court in all other respects, we find that the direction for remand after the judgment of this Court in the aforesaid case would be otiose and wholly unnecessary. In fact, the issue having been settled, the remand has become redundant.

In the circumstances, we set aside the impugned order(s) of the High Court. The appeals are, accordingly, allowed. Consequently, the original orders of assessment i.e., prior to rectification are restored.

No costs.

Pending application(s), if any, shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
SEPTEMBER 14, 2023

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCIVIL APPEAL NO(S).2445/2011

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Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX (CENTRAL), KOLLAM

Respondent(s)

WITH

C.A. No. 2446-2447/2011 (XI-A)

Date : 14-09-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. R. N. Keswani, AOR
Mr. Sanjay Kunur, Adv.
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For Respondent(s) Mr. Raj Bahadur Yadav, AOR
Mr. N. Venkataraman, A.S.G.
Mr. Rupesh Kumar, Adv.
Mr. Akshit Pradhan, Adv.
Mrs. Rekha Pandey, Adv.
Mr. Shreeyash U. Lalit, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeals are allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)
COURT MASTER (SH)

(MALEKAR NAGARAJ)
COURT MASTER (NSH)

(Signed order is placed on the file)