

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 3612-3613 OF 2012**

M/S S.M. OVERSEAS PVT. LTD.

Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX

Respondent(s)

O R D E R

Feeling aggrieved and dissatisfied with the impugned judgment and orders dated 27.07.2010 passed by the High Court of Punjab and Haryana at Chandigarh in ITA No. 556 of 2009 as well as the subsequent order dated 29.09.2010 passed in Review Application No. 166-CII of 2010 dismissing the Review Application preferred by the assessee, the assessee has preferred the present Appeals.

The facts leading to the present Appeals in a nut shell are as under:-

The dispute is with respect to the A.Y. 1995-96. The Assessment Order came to be passed under Section 143(1) of the Income Tax Act (for short "the Act"). The assessee claimed the benefit under Section 80 HHC of the Act for the A.Y. 1995-96. However, in the subsequent A.Y., the assessee claimed the bad debt on the ground that, in the earlier year, the export was not materialized and therefore, the proceedings under Section 154 of the Act were initiated by the Department, vide notice dated 23.01.2002. During the pendency of the said proceedings, the Department also initiated the proceedings under Section 147-148 of the Act and reopened the assessment for the A.Y. 1996-97. The

Assessing Officer passed the Assessment Order. The same was carried before the ITAT. The ITAT quashed and set aside the assessment proceedings which were re-opened under Section 148 of the Act by holding that as the proceedings under Section 154 initiated against the assessee were pending, no re-opening proceedings under Section 147/148 of the Act could have been issued/initiated. Consequently, the ITAT quashed and set aside the Assessment Order for the A.Y. 1995-96. The order passed by the ITAT was the subject-matter of Appeal before the High Court. The High Court, by the impugned judgment and order, has allowed the said Appeal preferred by the Revenue and remanded the matter to the ITAT by observing that as the proceedings under Section 154 were beyond the period of limitation prescribed under Section 154(7) of the Act, the said notice was invalid and therefore, the re-opening proceedings under Section 147/148 would be maintainable. The review application preferred by the assessee has been dismissed. Hence the present Appeals.

Having heard learned counsel appearing on behalf of the respective parties and having gone through the impugned judgment and order passed by the High Court, we are of the opinion that the High Court has committed serious error in observing and holding that the notice under Section 154 was invalid as the same was beyond the period of limitation as prescribed/provided under Section 154(7) of the Act. It is required to be noted that the proceedings under Section 154 of the Act were not the subject-matter before the High Court. Nothing was on record that,

in fact, the notice under Section 154 of the Act was withdrawn on the ground that the same was beyond the period of limitation prescribed under Section 154(7) of the Act. In the absence of any specific order of withdrawal of the proceedings under Section 154 of the Act, the proceedings initiated under Section 154 of the Act can be said to have been pending.

In that view of the matter, during the pendency of the proceedings under Section 154 of the Act, it was not permissible on the part of the Revenue to initiate the proceedings under Section 147/148 of the Act pending the proceedings under Section 154 of the Act. The High Court has erred in presuming and observing that the proceedings under Section 154 were invalid because the same were beyond the period of limitation.

In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The order passed by the ITAT is hereby restored.

The present Appeals are accordingly allowed to the aforesaid extent. No costs.

..... J.
(M.R. SHAH)

..... J.
(C.T. RAVIKUMAR)

New Delhi;
December 07, 2022.

ITEM NO.102

COURT NO.5

SECTION IV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No(s). 3612-3613/2012

M/S S.M.OVERSEAS PVT. .LTD.

Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX

Respondent(s)

Date : 07-12-2022 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMARFor Appellant(s) Ms. Kavita Jha, AOR
Mr. Anant Mann, Adv.For Respondent(s) Mr. Balbir Singh, ASG
Mr. Arijit Prasad, Sr. Adv.
Mr. Rupesh Kumar, Adv.
Mr. Prahlad Singh, Adv.
Mr. Shashank Bajpai, Adv.
Ms. Alka Agrawal, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. Raj Bahadur Yadav, AOR

UPON hearing the counsel the Court made the following

O R D E R

The present Appeals are allowed to the extent as indicated in
the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)