IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

T.C.A. NO. 148 OF 2015

Commissioner of Income Tax
Chennai. .. Appellant/ Appellant

- Vs -

Dynavision Ltd.,
Chennai.

.. Respondent/ Respondent

Appeal filed under Section 260A of the Income Tax Act against the order dated 24.01.2002 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, made in ITA No.1534(Mds)/93 for the assessment year 1988-89.

against the order of the Commissioner of Income Tax (Appeals) I Madras dated 19.1.1993 in Appeal Nos.280-282/90-91& 87/91-92 which were filed against the order of the Assistant Commissioner central Circle (II) (1) Madras-34 dated 22.3.1991 and made in P.A.No.47-041-CT-0595.

For Appellant : Mr. T.Ravikumar
Standing Counsel

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

This Tax Case (Appeals) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal relating to the assessment year 1988-89 raising the following substantial question of law:

> "Whether in the facts and circumstances of the case, the Tribunal was justified in law in holding that excise duty paid/payable will not form part of closing stock?"

2. The brief facts of the case are as follows:
The assessee is engaged in the business of manufacture and sale

of television sets. For the assessment year 1988-89, the Assessing Officer, while computing the assessment under Section 143(3) found that the assessee had not included in the closing stock the element of excise duty. Accordingly, the he added the said sum to the income of the assessee on the ground of undervaluation of closing stock. Aggrieved by the same, the assessee preferred an appeal before Commissioner of Income Tax (Appeals), who allowed the appeal by directing the Assessing Officer to allow the relief. Aggrieved by the said order, the Revenue preferred an appeal before the Tribunal. The Tribunal by following the decision in respect of assessee's own case pertaining to the previous assessment year dismissed the appeal. As against the same, the Revenue is before us.

3. Learned Standing Counsel appearing for the Revenue fairly conceded before this Court that the issue involved in the present case in respect of the very same assessee has been decided against the Revenue in the decision reported in [2012] 348 ITR 380 (SC) (Commissioner of Income-Tax V. Dynavision Ltd.), wherein on a similar question of law raised, the Supreme Court held as follows:

> " 3. At the outset, it may be stated, that, it is not in dispute that the assessee has been following consistently the method of valuation of closing stock which is "cost or market price, whichever is lower." Moreover, the Assessing Officer conceded before the Commissioner of Income-tax (Appeals) that he revalued the closing stock without making any adjustment to the opening stock (see page 50 of the paper book). Lastly, though under section 3 of the Central Excise Act, 1944, the levy of excise duty is on the manufacture of the finished product the same is quantified and collected on the value (i.e. selling price). Before concluding, we may rely on the judgment of this court in the case of Chainrup Sampatram v. CIT reported in [1953] 24 ITR 481 (SC) in which it has been held that, "valuation of unsold stock at the close of the accounting period was a necessary part of the process of determining the trading results of that period. It cannot be regarded as source of profits. That, the true purpose of crediting the value of unsold stock is to balance the cost of the goods entered on the other side of the account at the time of the purchase, so that on cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions in which actual sales in the course of the year has taken place and thereby showing the profit or loss actually realized on the year's trading. The entry for stock which appears in the trading account is intended to cancel the charge for the goods bought which have remained unsold which should

represent the cost of the goods". (see also : para. 8 of the judgment of this court in the case of CIT v. Hindustan Zinc Ltd. reported in [2007] 291 ITR 391 (SC).
4. For the above reasons, we hold, that, the addition of Rs. 16,39,000 to the income of the assessee on the ground of undervaluation of the closing stock was wrong and that the order of the Commissioner of Income-tax (Appeals) is accordingly upheld. Consequently, this civil appeal filed by the Department is dismissed with no order as to costs."

4. In view of the above, following the above-said decision of the Supreme Court in respect of the very same assessee for the assessment year 1987-88, the question of law is answered against the Revenue and in favour of the assessee. This Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Assistant Registrar
Income Tax Appellate Tribunal, 'C' Bench,
Rajaji Bhavan III Floor, Besant Nagar, Chennai.90

2. The Commissioner of Income Tax (Appeals) - I, Madras.

3. The Assistant Commissioner, Central Circle II(1), Madras - 34.

1 cc to Mr.T. Ravikumar, Advocate, Sr. 16373

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