IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Tax Case Appeal No.398 of 2016

Commissioner of Income Tax,
Trichy ... Appellant

Vs

M/s.INTEX,
16-D, Coimbatore Road,
Karur - 639 001 ... Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 30.01.2015 in ITA No.147/Mds/2014 (Assessment Year 2010-11) against the order passed by the Commissioner of Income Tax (Appeals) Trichirappalli, dated 23/10/2013 in ITA 173/2012-13/CIT)(A)/TRY and against the order passed by the Assistant Commissioner of Income Tax, Circle-II, Trichy, in PAN/GIR No.AAAFI1075M dated 31/11/13 for the Assessment Year 2010-11.

For appellant : Mr.J.Narayanasamy
Sr. Standing Counsel for Income Tax.

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

This Appeal has been filed against the order of the Income Tax Appellate Tribunal, 'B' Bench, Madras, dated 30.01.2015 for the assessment year 2010-11.

2. The substantial questions of law raised in the instant appeal are:-

> "1. Whether on the facts and in the circumstances of the case the tribunal was right in holding that receipts from sale of carbon credits are to be treated as capital receipt not assessable to tax?

> 2. Whether on the facts and in the circumstances of the case the tribunal was right in holding that the receipts from the sale of carbon credits are entitled for deduction under section 80IA with respect to the wind mill division?
>
> 3. Whether on the facts and in the circumstances of the case the tribunal was right in holding that assesse is entitled for deduction under Section 80IA with respect to the wind mill division by following the decision of the Madras High Court in the case of Velayuthswamy Spinning Mills?"

3. In so far as Substantial Question No.3 is concerned, decision in Velayuthaswamy Spinning Mills case is stated to be pending on the file of the Hon'ble Apex Court and therefore, the same cannot be adjudged here.

4. However, not withstanding the above, Mr.J.Narayanasamy, learned Senior Standing Counsel for Income Tax submitted that the monetary limit in the instant tax appeal falls within the ambit of the Circular bearing No.21 of 2015, dated 10.12.2015. He further submitted that there is no audit objection.

5. In the light of the above, Mr.J.Narayanasamy, learned Senior Standing Counsel for Income Tax seeks permission to withdraw, Tax Case Appeal No.398 of 2016, subject of course the substantial questions of law Nos.1 and 2 be left open.

6. Placing on record the above submissions, the instant Tax Case Appeal No.398 of 2016, is dismissed as withdrawn, leaving substantial questions of law Nos.1 and 2, open. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Commissioner of Income Tax,
Trichy.

2.The Income Tax Appellate Tribunal,
Madras 'B' Bench,
Chennai.

3.The Commissioner of Income Tax (Appeals),
Trichirappalli.

4.The Assistant Commissioner of Income Tax,
Circle-II,
Trichy.

+1cc to Mr.J.Narayanasamy, Advocate sr.32719

Tax Case Appeal No.398 of 2016

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srg 29/06/2016