IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2016

C O R A M

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal No.606 of 2016

Principal Commissioner of Income Tax 3
No.63, Race Course Road,
Coimbatore. ... Appellant/Appellant

Vs

M/s.Arun Textiles Pvt. Ltd.,
No.20, Perumal Koil Street,
Tirupur - 641 604. ... Respondent/Respondent

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 27.11.2015 in ITA No.1714/Mds/2015, against the order dated 29.05.2015 in I.T.Appeal No.20/2014-15, on the file of the Commissioner of Income Tax(Appeals)-3, Coimbatore against the order of the Joint Commissioner of Income Tax, Tirupur Range, Tirupur for the PAN No.AABCA89821D for the year 2011-12.

For Appellant : Mr.T.R.Senthil Kumar
Sr. Standing Counsel for Income Tax

J U D G M E N T
(Judgment of the Court was made by S.Manikumar,J)

Challenge in this Tax Appeal, is to an order passed by the Income Tax Appellate Tribunal in ITA No.1714/Mds/2015, dated 27.11.2015, by which, the Tribunal dismissed the appeal preferred by the Revenue, against the order of the Commissioner of Income-Tax (Appeals) dated 29.05.2015 for the Assessment Year 2011-12.

2. Revenue has come up with the instant Tax Case Appeal, raising the following substantial questions of law:-

> “1. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee is entitled to deduction under section 80 IA of the Income Tax Act?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that unabsorbed depreciation of the earlier years before the first year or claim, which has already been absorbed, should not be notionally carried forward and taken into consideration for computation of deduction u/s.80 IA of the Income Tax Act?"

3. As regards substantial questions of law raised, it is the fair representation of the learned Senior Standing Counsel for Income Tax Department that this Court has been consistently following the decision in M/s.Velayudhaswamy Spinning Mills (P) Ltd., v. Assistant Commissioner of Income-Tax reported in 340 ITR 477. He also submitted that challenge to the same, is pending before the Hon'ble Apex Court in SLP No.1136 of 2011.

4. Similar to the facts and circumstances of the case, while adverting to the substantial questions of law raised and after considering the judgment of the Hon'ble Apex Court in Liberty India vs. CIT reported in (2009) 225 CTR (SC) 233 : (2009) 28 DTR (SC) 73 : (2009) 317 ITR 218 (SC) and the judgment of the Rajasthan High Court in CIT vs. Mewar Oil & General Mills Ltd. reported in (2004) 186 CTR (Raj) 141 : (2004) 271 ITR 311 (Raj), a Hon'ble Division Bench of this Court in Velayudhaswamy Spinning Mills Pvt. Ltd.'s case (stated supra), held that once the losses and other deductions are set off against the income of the assessee in the previous year, it should not be re-opened again, for the purpose of computation of current year income, under Sections 80-I and 80-IA of the Act.

5. Velayudhaswamy Spinning Mills Pvt. Ltd.'s case (stated supra), has been followed in CIT v. R.Yuvaraj reported in [2015] 57 TAXMANN.COM 252 (Madras), wherein, it has been held that though it was contended that SLP filed against the above reported judgment, is pending on the file of the Hon'ble Supreme Court, the effect of the same, would not amount to reversal or erase the dictum.

6. Material on record discloses that while confirming the order of the Commissioner of Income-Tax (Appeals), the Income Tax Appellate Tribunal, at paragraph No.6 has held as follows:

"After hearing both the parties, we are of the opinion that similar issue was considered by this Tribunal in assessee's own case in ITA No.2174/Mds/2015 dated 19.06.2015 for the assessment year 2010-11, wherein it was observed as under:

"4. We have heard both the parties and perused the material on record. In our opinion, carbon credit is in the nature of "an entitlement" received to improve world atmosphere and environment reducing carbon, heat and gas emissions. The entitlement earned for carbon credits can, at best, be regarded as a capital receipt and cannot be taxed as a revenue receipt. It is not generated or created due to carrying on business but it is accrued due to "world concern". It has been made available assuming character of transferable right or entitlement only due to world concern. The source of carbon credit is world concern and environment. Due to that the assessee gets a privilege in the nature of transfer of carbon credits. Thus, the amount received for carbon credits has no element of profit or gain and it cannot be subjected to tax in any manner under any head of income. It is not liable for tax for the assessment year under consideration in terms of Sections 2(24), 28, 45 and 56 of the Income Tax Act, 1961. Carbon credits are made available to the assessee on account of saving of energy consumption and not because of its business. Further, in our opinion, carbon credits cannot be considered as a bi-product. It is a credit given to the assessee under the Kyoto Protocol and because of international understanding. Thus, the assessees who have surplus carbon credits can sell them to other assessees to have capped emission commitment under the Kyoto Protocol. Transferable carbon credit is not a result or incidence of one's business and it is a credit for reducing emissions. The persons having carbon credits get benefit by selling the same to a person who needs carbon credits to overcome one's negative point carbon credit. The amount received is not received for producing and/or selling any product, bi-product or for rendering any service for carrying on the business. In our opinion, carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt. The same view is supported by the following judicial precedents, which are relied on by the ld. AR:

1. CIT v. My Home Power Ltd. (2014) [365 ITR 82] (AP)
2. My Home Power Ltd. v. DCIT [21 ITR (Trib) 186] (Hyd)
3. Ambika Cotton Mills Ltd v. DCIT (2013) [27 ITR (Trib) 44] (Chennai)

4. DCIT v. Salona Cotspin Ltd. in ITA No.426/Mds/2013 for AY 209-10.

5. Sri Velayudhaswamy Spinning Mills (P) Ltd. v. DCIT in ITA No.582/Mds/2013 for AY 2009-10.

6. Sri Matha Spinning Mills Pvt. Ltd. v. DCIT in ITA No.617/Mds/2013 for AY 2009-10.

7. Sudhan Spinning Mills Pvt. Ltd v. JCIT in ITA No.616/Mds/2013 for AY 2009-10.

8. Prabhu Spinning Mills (P) Ltd & Anr. v. DCIT in ITA Nos.651 & 652/Mds/2013 for AY 2009-10.

9. Vedha Spinning Mills (P) Ltd v. DCIT in ITA No.630/Mds/2013 for AY 2009-10.

10. Adisankara Spinning Mills (P) Ltd v. DCIT in ITA No.631/Mds/2013 for AY 2009-10.

11. Sri Shanmugavel Mills (P) Ltd. v. DCIT in ITA No.619/Mds/2013 for AY 2009-10.

12. Arun Textiles Pvt. Ltd. v. ACIT in ITA No.268/Mds/2014 for AY 2009-10.

13. India Dyeing Mills Pvt. Ltd. v. ACIT in ITA No.498/Mds/2014 for AY 2009-10.

14. DCIT v. Sree Rayalaseema Green Energy Ltd (2014) [36 ITR (Trib) 627] (Hyd)

15. Eastman Spinning Mills (P) Ltd v. DCIT in ITA No.1428/Mds/2014 for AY 2009-10.

5. In view of the above, we are inclined to hold that the receipt from sale of carbon credits has to be considered as capital receipt and accordingly, it is not taxable. Thus, there is no question of considering the same for deduction u/s. 80IA of the Act."

7. Going through the material on record, we are of the view that there are no valid grounds to reverse the aforesaid orders. Questions of law raised are answered against the Revenue and in favour of the assessee and the instant appeal deserves to be dismissed.

8. In the result, the Tax Case Appeal is dismissed at the stage of admission itself. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1.The Appellate Tribunal,
'C' Bench, Madras.

2.The Commissioner of Income Tax,
(Appeals) - 3,
Coimbatore.

3.The Joint Commissioner of Income Tax,
Tiruppur Range, Tiruppur.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.48963

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VGI(CO)
CA(22/09/2016)