IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.02.2017

CORAM:

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

TAX CASE APPEAL No.486 of 2010

The Commissioner of Income Tax-I,
Tiruchirapalli ... Appellant/Respondent

Versus

M/s.Heritage Clothing inc.
33/53, C-3, III Cross,
Kamarajapuram North
Karur ... Respondent/Appellant

Tax Case Appeal file under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai dated 09.10.2009 passed in I.T.A.No.1846/Mds/2008, and against the Order of the Commissioner of Income Tax(Appeals), Tiruchirapalli dated 21.07.2008 in I.T.A.No.490/2006-07 and against the Order of the Deputy Commissioner of Income Tax, Circle II, Tiruchirapalli dated 27.12.2006 in PAN/GIR No.AACPH1637E.

For Appellant : Mr.J.Narayanaswamy

For Respondent : served, No appearance

JUDGMENT

The Tax Case Appeal filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai dated 9.10.2009 in ITA.No.1846 /Mds/2008 has been admitted on 22.06.2010 for consideration of the following substantial questions of law:

> "(i). Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the face value of DEPB is chargeable to tax on accrual basis and that the profit on sale of DEPB representing the excess of sale proceeds of DEPB over its face value is liable to be considered under section 28(iii)(d) at the time of its sale?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the scheme of DEPB is not an automatic benefit to an exporter in the form of cash assistance; but arises only on making application to the concerned authority pursuant to exports and is in the nature of "benefit of perquisite arising out of business" and therefore is chargeable to tax under Section 28 (iv)?"

2. Circular instruction issued by the Central Board of Direct Taxes No.21/2015, dated 10.12.2015 stipulates that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.20 lakhs. In the instant case, the tax effect is less than the monetary limit imposed and the appeal is hence, dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msr

To

1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench.

2.The Commissioner of Income Tax(Appeals),
Tiruchirapalli.

3.The Deputy Commissioner of Income Tax,
Circle II, Thiruchirapalli.

+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No.6610

TAX CASE APPEAL No.486 of 2010

KK(CO)
CA(03/04/2017)