IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case (Appeal) Nos.779 and 780 of 2009

Neyveli Lignite Corporation Ltd.,
Corporate Office Block-I,
Neyveli 607 801. Appellant in both Appeals

Vs.

The Assistant Commissioner of
Income Tax, Company Circle-IV(4)
Chennai 600 034. Respondent in both Appeals

Tax Case Appeals filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 18.12.2008 in ITA Nos.920/Mds/2008 and 921/Mds/2008 respectively.

TCA.No. 779 of 2009: Against the Order of the commissioner of Income Tax (Appeals) V, Chennai dated 14-01-2008 and made in ITA.No. 127/06-07 for the Assessment Year 2003-2004.

Against the Order of the Assistant Commissioner of Income Tax, company circle IV (4), Chennai 34, dated 27.03.2006 and made in Pa.No. /G.I.No.AAACN1121C/NE-65 for the Assessment Year 2003-04.

TCA.No. 780 of 2009 against the Order of the Commissioner of Income Tax (Appeals) IV, Chennai 34, dated 10.01.2008 and made in ITA.No.444/06-07 for the Assessment Year 2004-2005.

Against the Order of the Additional Commissioner of Income Tax, Company Range IV, Chennai dated 11.12.2006 and made in P.A.No. /G.I.No. AAA CN 1121C/NE-65 for the Assessment Year 2004-2005.

For Appellant : Mr.R.Vijayaraghavan

For Respondent : Mrs.R.Hemalatha,
Standing Counsel

JUDGMENT

(Judgment of the court was delivered by DR.ANITA SUMANTH,J.)

These Tax Case Appeals relate to assessment years 2003-2004 and 2004-2005. The following substantial question of law has been framed:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that components of price for sale of electricity fixed on basis of tax liability should not be taken as part of sale price of electricity in computing relief under Section 80IA?"

2. Mr.R.Vijayaraghavan, learned counsel appearing for the appellant/assessee and Mrs.Hemalatha, learned Senior Standing Counsel appearing for the Revenue concur on the position that the question of law has been answered by this court vide its order in the assessee's own case for assessment year 2001-2002 reported in (2014) 267 CTR 352 (Neyveli Lignite Corporation Ltd. v. Assistant Commissioner, Income Tax.).

3. The question raised in that case is identical to the question before us now, relating to the eligibility of the assessee to deduction under section 80IA of the Income Tax Act in relation to the income earned from the sale of electricity and whether the price component determined inter se parties would also be taken to be a part of sale price.

4. This court has, in its order aforesaid, noticed as follows:-

> "6. A reading of the agreement dated 18.2.1999 entered into between the assessee and the various State Electricity Boards thus show the modalities of arriving at the tariff which includes the tax liability of Neyveli Lignite Corporation. Thus, it is evident that the tariff that was arrived at between the parties consisted of various components including tax liability on the income streams from the core activity of NLC and the quantification was to be done on the basis of the methods given in Clause 6.2 of the agreement. A reading of the same thus makes it clear that in strict sense, there was no reimbursement of the tax liability by the recipient, but was treated as part of the tariff and whatever was done on the receipt of the statement of the tax payable by the assessee was that the tariff price payable on the electricity sold was finally reckoned with reference to the above said tax payment. In the circumstances, it is clear that by "reimbursement", it does not mean that the tax paid by the assessee was very much part of the tariff and hence, part of the sale price."

and has concluded in para 18 as under:-

> "18. In the circumstances, we have no hesitation in accepting the plea of the assessee that the Commissioner committed serious error in dissecting the tariff to come to the conclusion that the tax component specified as part of the tariff is reimbursement of the liability of the assessee and hence it would not form part of the income. As already pointed out, when the Revenue had not questioned the genuineness of the agreement between the parties and liberty is thus available for the parties to arrive at the cost of the energy to be supplied by the assessee as guided by the notifications of the Ministry of Power in this regard, we find no ground to sustain the plea of the Revenue that the relief to be granted under Section 80IA calls for exclusion of the tax component in the sale price of electricity. Consequently, the first question raised in the tax case is answered in favour of the assessee and the order of the Tribunal is set aside."

5. It is not in question that the order of the High Court dated 16.7.2012 has attained finality and has also been followed while deciding the identical issue for the intervening assessment year, i.e., assessment year 2002-2003. Moreover, in respect of the present two assessment years, the orders of the first and second appellate authorities have been passed in 2008 prior to this court's decision dated 16.7.2012.

6. In the light of the above, we answer the question of law in favour of the assessee and against the Revenue. The Tax Case (Appeals) are allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

TO

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

2.The Assistant Commissioner of
Income Tax,
Company Circle-IV (4),
Chennai.

3.The Commissioner of Income Tax,
(Appeals) - IV, Chennai.

4. The Additional Commissioner of Income Tax,
Company Range IV, Chennai.

+1cc to Mr.T.Ravi Kumar, Senior Standing Counsel,
Advocate, S.R.No. 80604

+1cc to Mr.Subbaraya Aiyar, Padmanaban, Advocate, S.R.No. 80766

T.C.A.Nos.779 & 780 of 2009

SV(CO)
GN(20/12/2018)