IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.12.2018

CORAM

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

Tax Case Appeal No.873 of 2009

Commissioner of Income Tax
Madurai. .... Appellant

Vs.

M/s.Fenner (India) Ltd.,
3, Madurai Melakkal Road,
Kochadai, Madurai. .... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 26.02.2009 made in ITA No.1085/Mds/2008 for the Assessment Year 1995-96.

Appeal against the order passed by the Commissioner of Income Tax (Appeals)I, Madurai dated 12.12.2007, in I.T.A. 3/07-08, against the order passed by the Assistant Commissioner of Income Tax Circle I, Madurai in P.A. number AAACF2348D for the assessment year 1995-1996 dated 29.12.2006.

For Appellant : Ms.S.Premalatha
for Mr.M.Swaminathan
Standing Counsel

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 26.02.2009 made in ITA No.1085/Mds/2008 for the Assessment Year 1995-96 by raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in treating the subsidy received from SIPCOT as in incentive to adopt alternative source of energy for generation of electricity as capital receipt, even though the grnat was made long after the windmills were installed, and was not granted for acquiring any particular plant or machinery?"

2. When the matter is taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.7.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the appeal filed by the Revenue is dismissed as not pressed, keeping open the substantial question of law for determination in an appropriate case.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

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

2. The Commissioner of Income Tax, Madurai.

3. The Commissioner of Income Tax (appeals)I
Madurai.

4. The Assistant Commissioner of Income Tax
Circle I, Madurai.

+1 CC to Mrs.S. Premalatha, Advocate sr 83133.

TCA No.873 of 2009

SSI(CO)
SP(08/01/2019)