IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.129 & 130 of 2009 &

M.P.Nos.1 of 2009 & 1 0f 2010

M/s. Radha Metals
Rep. by its Partner
Sri N.R.Maharajan
No.268, Mint Street
Chennai - 600 003. .. Petitioner in both WPs

v.

1.The Assistant Commissioner of Income Tax
Business Circle XII
Kannamai Buildings (7th Floor)
No.611, Anna Salai, Chennai - 600 006.

2. Union of India
Ministry of Finance
Rep. by its Secretary
Department of Revenue
Central Secretariat, North Block
New Delhi - 110 001 .. Respondents in both WPs

W.P.Nos.129/2009 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in proceedings No. PAN AADFR1917N, dated 28.11.2008 relating to the assessment year 2003-04 on the file of the first respondent and quash the same.

W.P.Nos.130/2009 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of declaration, declaring provisions of sections 28 and 80 HHC of the Taxation Law (Amendment) Act 2005 ultra vires and violative of Articles 14, 19(1)g, 246(1), 265 and 301 of the Constitution of India in so far as it seeks to deny the deduction u/s 80 HHC in respect of profit of sale of DEPB is respect of exporter having export turnover exceeding Rs.10 crores.

For Petitioner : Mrs.Sri Lakshmivalli

For Respondents : Mr.J.Narayanaswamy
Standing Counsel

COMMON ORDER

Heard Mrs.Sri Lakshmivalli, learned counsel appearing for the petitioner and Mr.J.Narayanaswamy, learned Standing Counsel appearing for the respondents.

2. Learned counsel on either side submits that the issue involved in these writ petitions is squarely covered by the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax and another v. Avani Exports and another reported in 2015 (277) CTR 460, which was taken note of by this court in the case of Geral Pereira v. Income Tax Officer made in W.P.Nos.13909 and 13910 of 2008, dated 06.09.2016 and in the case of P.M.Palani Mudaliar & Co. v. Union of India Rep. by Union of India, Rep. by the Secretary, Ministry of Finance,North Block,New Delhi and another made in W.P.No. 15507 of 2007, dated 19.09.2017.

3. The conclusion arrived at by the Honourable Supreme Court in the aforesaid decision is that "the Amendment of Section 80HHC(3) made by insertion of certain conditions in the third and fourth provisos thereto with retrospective effect by Taxation Laws (Second Amendment) Act, 2005 is quashed; exporters having turnover below Rs.10 crores and those having turnover above Rs.10 crores should be treated similarly". Thus, these writ petitions stand allowed in terms of the orders passed by the Hon'ble Apex Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Rj

To

1.The Assistant Commissioner of Income Tax
Business Circle XII
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Chennai - 600 006.

2. Union of India
   Ministry of Finance
   Rep. by its Secretary
   Department of Revenue
   Central Secretariat, North Block
   New Delhi - 110 001

+1cc to Mr.N.MUTHUKUMAR, Advocate, S.R.No.38105
+1cc to Mr.RAJ KUMAR JHABABH, Advocate, S.R.No. 38012

W.P.Nos.129 & 130 of 2009 &
M.P.Nos.1 of 2009 & 1 of 2010

SAI(CO)
TR(27/06/2018)