IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1376 of 2008

M/s.Asvini Fisheries Ltd.,
(since converted as a Private Ltd Co)
136 & 139, Old Mahabalipuram Road,
Karapakkam,
Chennai-600 096 ... Appellant

-vs-

The Deputy Commissioner
of Income Tax,
Company I(1),
Chennai-600 034 ` ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Benchdated 21.04.2006 in ITA No.103/Mds/2003 for the Assessment year 1999-2000.

For Appellant : Mr.V.Vikram

For Respondent : Mrs.R.Hemalatha

J U D G M E N T
[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal is filed by the assessee against the order passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 21.4.2006, in ITA No.103/Mds/2003, for the Assessment Year 1999-2000.

2.Heard Mr.V.Vikram, Learned Counsel for the appellant and Mrs.R.Hemalatha, Learned Counsel for the Revenue.

3.This Appeal has been admitted on 02.09.2008, on 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 sale consideration received by the Appellant from the Export Houses in excess of the F.O.B.value, cannot be treated as part of sale price and hence not entitled to deduction under Section 80HHC of the Act?

2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in not appreciating that the said additional consideration was included, as part of sale price, in the invoices raised on the export houses and, therefore, it forms part of sales/total turnover and included in the total turnover for the computation under Section 80HHC and is not in the nature of receipt to be excluded in terms of clause (baa) under Explanation to Sec.80HHC?.

4.The above referred Substantial Questions of Law were considered by the Division Bench of this Court in the assessee's own case for the Assessment Years 1994-95, 1997-98 in T.C.A.Nos.890 and 891 of 2008, dated 09.07.2008, in the Commissioner of Income Tax vs. Aswini Fisheries Ltd., [reported in (2008) 76 CCH 0789 ChenHC] and decided in favour of the assessee. The operative portion of the judgement reads as follows:

3.Learned Counsel for the Revenue fairly submits that the issue is now once and for all settled by the Supreme Court in the case of CIT vs. Baby Marine Exports (2007) 209 CTR (SC) 183: (2007) 290 ITR 323 (SC).

4.In the case of CIT vs. Baby Marine Exports (supra), the assessee was engaged in the business of selling marine products both in the domestic market and also exporting them directly as well as through export houses. In relation to exports through export houses, the export house agreed to pay the assessee an incentive of 2.25 per cent of the FOB value as an incentive commission. The assessee showed the premium as part of its total turnover for the purpose of the special deduction under S.80HHC of the IT Act, 1961. The AO rejected the claim of the assessee holding that the assessee, a supporting manufacturer, sold the goods to the export house in respect of which the export house had issued a certificate under the proviso to S.80HHC (1); (sic) that the export house premium was nothing but an integral part of sale price realised by the assessee; that the premium could not possibly be considered to be either commission or brokerage, as a person could not earn commission or brokerage for himself; and that the export house premium received by the assessee was includible in the profits of the business' of the assessee while computing the deduction under Section 80HHC. On appeal by the Department the High Court also held that the assessee was entitled to the benefit of S.80 HHC on the export premium received from the export houses. On appeal to the Supreme Court, the Supreme Court while affirming the decision of the High Court held that 'since the sales were to the export house the provisions of sub-S.(1) of S.80HHC did not apply to the case of the assessee. Only the provisions of sub-S.(1A) of S.80HHC applied.

5.As the questions of law now raised in this appeal have already been decided against the review (sic-Revenue) in the abovesaid judgement, following the said judgement, these appeals are dismissed. Consequently, the connected Misc. Petn.No.1 of 2008 is also dismissed.

5.In respect of the Assessment Years 1998-99 and 1994-95, identical Questions were considered by this Court, in an Appeal filed by the Revenue in Tax Case (Appeal) Nos.299 and 300 of 2007, and following the decision for the Assessment Years as referred above, the Appeals were dismissed by Judgement dated 19.11.2013.

Following the above referred decisions, this Appeal is allowed. No costs.

[T.S.S., J.] & [V.B.S., J.]
18.09.2018

msk

Index:Yes/No

Internet:Yes/No

To

1.Income Tax Appellate Tribunal Madras 'A' Bench

2.The Deputy Commissioner
of Income Tax,
Company I(1),
Chennai-600 034

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

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T.C.A.Nos.1376 of 2008

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