IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). NO.277 OF 2010

Commissioner of Income Tax,
Chennai. .. Appellant

vs.

M/s.K.H. Arind Private Ltd.,
K.H. House,
No.2, Thiru Narayana Guru Road,
Choolai, Chennai - 112. .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai dated 09.10.2009 passed in I.T.A.No.1572/Mds/2007. Against the order of the Commissioner of Income Tax (Appeals)XII, 121, Mahatma Gandhi Road, Chennai-600 034, dated 22.01.2007 passed in ITA.No.168/06-07 preferred against the Assessment order for the year 2003-04 dated 15.03.2006.

For Appellant : Mr.Karthik Ranganathan,
Sr. Standing Counsel
For Respondent : Mr.A.S.Sriraman
for Mr.S.Sridhar

JUDGMENT
(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The Revenue has come up with this appeal against the order of the Tribunal by formulating the following substantial questions of law:

"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction u/s 80HHC with respect to profit on sale of DEPB license entitlements?

2.Whether on the facts and circumstances of the case, the Tribunal was right in holding when net loss of Rs.10.18 lakhs was arrived from the sale of DEPB license of Rs.2.57 crore?

2.Heard the learned counsels appearing for the parties.

3.Insofar as the first substantial question of law is concerned, it is submitted by both the counsel that the issue has already been held in favour of the asessee in Commissioner of Income Tax Vs. Avani Exports ((2015) 58 taxmann.com 100 (SC)), wherein the Apex Court was pleased to hold that the proviso cannot be complied with with retrospective effect. The following paragraphs would be apposite:

"4.Against the High Court judgment these SLPs are filed by the Union of India. Mr.Mukul Rohtagi, learned Attorney General for India submits that once the prayer made was to severe the aforesaid two conditions as onerous and ultra vires, the High Court should have couched the reliefs in terms of that prayer only, instead of stating that the operation of the Section would be given effect to prospectively only and these conditions would not operate retrospectively. At the same time, he accepts that the legal position would be that those exporters with turnover of rupees less than Rs.10 corres and other like the respondents with turn over of more than Rs.10 corres would be at par and both would be entitled to the benefits.

5.We find that in essence the High Court has quashed the severable part of third and fourth proviso to Sec.80HHC (3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said proviso by the respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following direction:

"Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 cr. should be treated similarly. This order is in substitution of the judgment in Appeal."

6.With the aforesaid clarification all these SLPs including that of assessees filed against the judgment of M.P.High Court are disposed of."

4.In view of the above, the first substantial question of law is answered against the Revenue inasmuch as the assessment year is 2003-2004 and the amendment came in the year 2005.

5.Coming to the second question of law, the Tribunal has made reliance upon the earlier decision of the Special Bench. It is submitted by both the counsel that even the said substantial question of law has been answered against the Revenue by the Apex Court in Topman Exports Vs. Commissioner of Income Tax ((2011) 79 CCH 0881 ISCC).

6.In view of the same, both the substantial questions of law are answered against the Revenue. Accordingly, both the Tax Case Appeals stand dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
1. The Income Tax Appellate Tribunal,
"B" Bench, Chennai.

2. The Commissioner of Income Tax (Appeals)
XII, 121, Mahatma Gandhi Road, Chennai-600 034.

3. The Income Tax Officer,
Company Ward II (1) Chennai.

4. The Joint/Additional Commissioner of Income Tax
Company Range II

5. The Assistant Registrar,
Income Tax Appellate Tribunal,
III Floor, Rajaji Bhawan,
Besant Nagar, Chennai-90

+1cc to Mr.S.Sridhar, Advocate, S.R.No.43789

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NA(Co)
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