THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

I.T.T.A.NO.310 OF 2006

JUDGMENT: (per SK,J)

This appeal by the Revenue in relation to the assessment year 1997-98 seeks to raise the following substantial questions of law:

(i) 'In the facts and circumstances of the case, whether the collection of statutory levy like sales tax and excise duty are liable to be excluded in the total turnover of the business of the assessee while calculating the deduction u/s. 80 HHC of Income Tax Act?

(ii) Whether the findings of the Tribunal to exclude the collection of sales tax and excise duty from the total turn over of the assessee while calculating the deduction u/s 80 HHC is sustainable in law?'

Sri Ajay Kumar, learned junior standing counsel for the Revenue, would fairly state that the issue raised in this appeal is squarely covered against the Revenue by the judgment of the Supreme Court in Commissioner of Income Tax v. Lakshmi Machine Works[1]. He would further state that following the aforestated judgment, this Court already dismissed I.T.T.A.No.298 of 2005 filed by the Revenue seeking to raise the very same questions of law that are now sought to be projected. Copies of both the aforestated judgments are placed on record.

Perusal of the order passed by this Court on 29.11.2017 in I.T.T.A.No.298 of 2005 demonstrates that the Revenue raised the very same question of law as in the present case that sales tax and excise duty being part of the total turnover were not liable to be deducted under Section 80HHC of the Income-tax Act, 1961 (for short, 'the Act of 1961').

[1] (2007) 290 ITR 667 (SC)

As this was the very issue that was settled by the Supreme Court in Lakshmi Machine Works[1], the Division Bench affirmed that excise duty and sale tax do not partake the character of turnover and were therefore not includable in the turnover under Section 80HHC(3) of the Act of 1961.

In terms of the aforestated order and following the ratio laid down by the Supreme Court in Lakshmi Machine Works[1], the substantial questions of law framed in this appeal are answered against the Revenue.

The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

____
SANJAY KUMAR,J

____
D.V.S.S.SOMAYAJULU,J

Date:05.03.2018

GJ