In the High Court of Judicature at Madras

Dated : 19.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1171 of 2010

Commissioner of Income Tax
-I, Tiruchirapalli ...Appellant

Vs

M/s.Metro Fabrics, Karur
44 & 46, Fifty Feet Road,
Ramakirhnapuram North, Karur ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 21.5.2010 made in ITA.No.694/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2003-04 against the order dated 17/11/2006 made in ITA No.73/06-07 on the file of the Commissioner of Income Tax (Appeals) Tiruchirappalli, against the order of the Deputy Commissioner of Income Tax, Circle II, Tiruchirappalli dated 17/03/2006 in PAN/GIR No.AAAFM5247P/20-FM-12.

For Appellant: Mr.M.Swaminathan, SSC, assisted by
Ms.V.Pushpa, SC

For Respondent: Mr.Ponnaiyan

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.M.Swaminathan, learned Senior Standing Counsel, assisted by Ms.V.Pushpa, learned Standing Counsel appearing for the appellant - Revenue and Mr.Ponnaiyan, learned counsel appearing for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 21.5.2010 made in ITA.No. 694/Mds/2007 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2003-04.

3. The appeal was admitted on 10.1.2011 on the following substantial questions of law :

> "i. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the face value of DEPB is chargeable to tax on accrual basis and that the profit on sale of DEPB representing the excess of sale proceeds of DEPB over its face value is liable to be considered under Section 28 (iiid) at the time of its sale? And
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> ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the scheme of DEPB is not an automatic benefit to an exporter in the form of cash assistance, but arises only on making application to the concerned Authority pursuant to exports and is in the nature of 'benefit of perquisite arising out of business' and therefore, is chargeable to tax under Section 28(iv)?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.



Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

RS

To

1. The Income Tax Appellate Tribunal, Chennai 'C' Bench.

2. The O/o. Commissioner of Income Tax, (Appeals),
4, William Road, Cantonemtn, Tiruchirappalli 620 001.

3. The Deputy Commissioner of Income Tax,
Circle-II, No.10, William Road,
Tiruchirappalli.

+1cc to Mr.M.Swaminathan, Advocate SR.No.70418

TCA.No.1171 of 2010

NRL(CO)
GMY(15/10/2019)