IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) Nos.368 & 369 of 2010

Commissioner of Income Tax
Chennai   Appellant in both cases

Vs.

Indowind Energy Limited,
Kothari Building 4th Floor,
114 Uthamar Gandhi Salai,
Chennai 600 034.   Respondent in both cases

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 10.7.2009 made in ITA No.2085/Mds/2008 & 2086/Mds/2008 Against the order of the Commissioner of Income Tax Appeals III, chennai in ITA.NO. 629/2006-07/A III and ITA.NO.368/2007-08/ A III dated 28/07/2008 against the order of the Assistant Commissioner of Income Tax Company Circle II (3), chennai 34 dated 08.12.2006 for the Assessment Year 2004-2005 and 2005-2006 dated 11.12.2007.

For Appellant : Mr.Rajesh,
Standing Counsel
For Respondent : Mr.A.S.Sriram for
Mr.S.Sridhar

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

These Tax Case Appeals have been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 10.7.2009 made in ITA No.2085/Mds/2008 & 2086/Mds/2008, for the Assessment Years 2004-05 and 2005-06, by raising the following substantial questions of law:

"Assessment Year 2004-05:-

1) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Claim from Indo Net Global Ltd for Rs.5,55,173/- towards reimbursement of expenditure incurred by on behalf of the assessee herein is allowable as deduction?

2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that amount spent by Indo Net Global Ltd towards the assessee company can be treated as loan paid to the assessee company and only 12% interest on such amount of compensation of Rs.50 lakhs had to be treated as allowable expenditure?

3) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the 50% of the total amount paid on 27.6.2002 towards UTI Lease Management fee aggregating to Rs.61.2 lakhs is allowable as deduction during this assessment year?

4) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the expenses claimed towards travel/advertisement/rates and taxes with respect to project of commissioning of wind mills is allowable as deduction?

5) Whether on the facts and circumstances of the case, the Tribunal was right in holding that treating the advance paid to its group company and not recovered as a business loss and allowing deduction?

Assessment Year 2005-06:-

6) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the 50% of the total amount paid on 27.6.2002 towards UTI Lease Management fee aggregating to Rs.61.2 Lakhs is allowable as deduction during this assessment year?"

2. When the matters are taken up for hearing, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

3. In the instant cases, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeals filed by the Revenue are dismissed, as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Commissioner of Income Tax
   Chennai

2. Income Tax Appellate Tribunal,
   'B' Bench, Chennai.

3. The Assistant Commissioner
   of Income Tax,
   Company Circle II(3), Chennai.

4. The Commissioner of Income Tax Appeals III, chennai 34

+1cc to Mr.S.Sridhar , Advocate SR.No. 80412

T.C.(A) Nos.368 & 369 of 2010

A.SK(15/11/2019)