IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.9.2019

CORAM

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

Tax Case (Appeal) Nos.419 to 421 of 2010

Commissioner of Income Tax LTU
Chennai. ..Appellant in all TCAs

Vs.

M/s.Carborandum Universal Ltd.,
'Party House' VI Floor,
43, Moore Street,
Chennai 600 001. ..Respondent in all TCAs

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dated 14.8.2009 made in ITA Nos.396/Mds/2009, 397/Mds/2009 and 398/Mds/2009 against the Common Appellate Order passed by the Commissioner of Income Tax (Appeals), Chennai -34, dated 25.09.2008, made in ITA No.38/07-08/LTU(A), 40/07-08/LTU(A) and ITA.39/07-08/LTU(A) against the Assistant Commissioner of Income Tax Company Circle-I(3), Chennai dated 31.10.2006 made in GI No./PA No.AAACC 2474-P for the Assessment Years 1992-93, 1996-97 & 1997-98.

For Appellant : Mr.T.Ravikumar
(in All) Senior Standing Counsel

For Respondent : Mr.Venkatanarayanan for
(in All) M/s.Subbaraya Aiyar

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, 14.8.2009 made in ITA Nos.396/Mds/2009, 397/Mds/2009 and 398/Mds/2009, for the Assessment Years 1992-93, 1996-97 and 1997-98, by raising the following substantial questions of law:

"i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Tribunal had already held that processing charges were not covered by the explanation (baa) of Section 80HHC while remitting the matter to the Assessing Officer to examine the details and since the said order had not been contested by the Revenue under Section 254(2) or 260A and the Tribunal had only issued the directions based on the decision of the Bombay High Court in 260 ITR 371?

ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in dismissing the Revenue's appeals on the ground mentioned in the preceding question, while actually the Tribunal had only remitted the matter to the Assessing Officer to examine the details of processing charges to find out whether they formed part of the operational income of the assessee and therefore, the Assessing Officer was free to examine the details and decide upon the exclusion of 90% of such receipts as per explanation (baa) of the Act?

iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the Revenue's appeals on a technical ground mentioned in question No.1 wrongly relying on the decision of the Madras High Court in 154 ITR 344 instead of adjudicating upon the computation of the deduction under 80HHC made by the Assessing Officer, on merits?"

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.

ssk.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Income Tax LTU
   Chennai.

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

3. The Assistant Commissioner of
   Income Tax,
   Large Taxpayer Unit
   Chennai 600 001.

+1cc to Mr.T.Ravikumar, Advocate, SR.No.76384
+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, SR.No. 76378

TC(A) Nos.419 to 421 of 2010

Kak(16/10/2019)