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 Nos.713 & 714 of 2010

Commissioner of Income Tax I,
Chennai ...Appellant /Respondent in Both TCAs.

Vs

M/s.Baer Shoes (India) Pvt. Ltd., Chennai-7 ...Respondent/Appellant in Both TCAs.

Common Prayer in TCA.Nos.713 & 714 of 2010 :

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 26.11.2009 made in ITA.Nos.1210 and 1211/Mds/2008 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment years 2003-04 and 2004-05.

ITA.Nos.1210/Mds/2008 against the Commissioner of Income Tax Appeals(III), 121, Mahatma Gandhi Road, Chennai -34 in PAN.No. AAACB3603R for the Assessment Year 2003-2004 in ITA.Nos.307/2006-07/A-III, dated 29/02/2008 against the Income Tax Officer, Company Ward I(1), Chennai -34 in G.I.No./PAN AAACB3603R/BX3-028 for the Assessment Year 2003-04 order dated 31/03/2006.

ITA.Nos.1211/Mds/2008 against the Commissioner of Income Tax Appeals(III), 121, Mahatma Gandhi Road, Chennai -34 in PAN.No. AAACB3603R for the Assessment Year 2004-2005 in ITA.Nos.965/2006-07/A-III, dated 29/02/2008 against the Income Tax Officer, Company Ward I(1), Chennai -34 in G.I.No./PAN. AAACB3603R/BX3-028 for the Assessment Year 2004-05 order dated 31/03/2006.

For Appellant: Mrs.R.Hemalatha, SSC

For Respondent: Mr.A.S.Sriraman

COMMON JUDGMENT
(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent – assessee.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 26.11.2009 made in ITA.Nos.1210 and 1211/Mds/2008 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment years 2003-04 and 2004-05.

3. The appeals were admitted on 26.7.2010 on 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 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
>
> 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 appeals are 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 the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event

the tax effect in the respective cases 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 appeals to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax (Appeals)III,
Chennai -34.

3.The Income Tax Officer, Company Ward I(1),
Chennai -34.

+1 cc to M/s.S.Sridhar,Advocate Sr.No. 70088
+1 cc to Mr.T.Ravi Kumar, Advocate Sr.No.70063

AKM/16.10.19/3P- 6C /

TCA.Nos.713 & 714 of 2010