IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.4699, 4700, 2492 of 2007 and 6192 of 2008
and
M.P.Nos.1 to 1 of 2007

Ramjee Leathers & Supplies,
No.118/4, General Patters Road,
Mount Road, Chennai - 600002.
Rep. by its Partner
Mr.R.Damodaran ...Petitioner in W.P.Nos.4699 & 4700/2007

M/s.JAY AR Enterprises,
No.7, N.S.Krishnan Street,
Easwaran Nagar,
Pammal, Chennai - 600075.
Rep. by its Partner,
Janardhan Rao ...Petitioner in W.P.No.2942/2007

M/s.Hidesign,
Rep. by its Partner,
Mr.Dilip kapur,
Odiampet Village,
Villianur,
Pondicherry - 605110. ...Petitioner in W.P.No.6192/2008

Vs

1. Union of India,
Rep. by its Secretary,
Ministry of Finance,
North Block, New Delhi.

2. The Central Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi.
3. The Assistant Commissioner of Income Tax,
Company Circle-I(1),
Aayakar Bhavan,
No.34, Nungambakkam High Road,
Chennai - 600034. ...Respondents in W.P.Nos.4699 & 4700/2007

Vs

1. The Joint Commissioner of
Income Tax,
Tambaram Range,
Tambaram, Chennai - 600045.

2. Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
Central Secretariat,
North Block, New Delhi- 110001.

...Respondents in W.P.No.2942/2007

1. The Assistant Commissioner of
Income Tax,
Circle I,
Puducherry.

2. Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
Centrl Secretariat,
North Block,
New Delhi- 110001.

3. The Central Board of Direct Taxes,
Rep. by its Secretary,
Central Secretariat,
North Block,
New Delhi - 110001.

...Respondents in W.P.No.6192/2008

Prayer in W.P.No.4699 of 2007: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records comprised in the order of assessment for the year assessment year 2004-2005 dated 29.11.2006 as made in PAN/GIR No. AAAFR523M on the file of the 3rd respondent, quash the same and consequently direct the 3rd respondent to pass fresh orders of assessment without reference to the provisions attached to Section 4 of the Amendment Act as the same is unconstitutional and invalid.

Prayer in W.P.No.4700 of 2007: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the following conditions and restrictions introduced vide Section 4 - Amendment of Section 80HHC(3)(i), Income Tax Act, 1961, introduced vide Taxation Laws Amendment Act, 2005 (Act 55 of 2005) dated 28.12.2005 -

"(a) he had an option to choose either the duty drawback or the duty entitlement pass book scheme, being duty remission scheme; and
(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under duty entitlement pass book scheme, being duty remission scheme;
(c) he had an option to choose either the duty drawback or the duty free replenishment certificate, being duty remission scheme; and
(d) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowance under the duty free replenishment certificate, being duty remission scheme."
as ultra vires offending Article 14, Article 19(1)(g) and Article 300-A of the Constitution of India and Section 80HHC(3)(i) of the Income Tax Act, 1961.

Prayer in W.P.No.2942 of 2007: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of declaration, declaring provisions of Section 28 and 80HHC by the Taxation Law (Amendment) Act 2005 ultra virus and violative of Articles 14, 19(1)(g), 246 (1), 265 and 301 of the Constitution of India, insofar as it seeks to deny the deduction u/s 80HHC in respect of profit on sale of DEPB in case of exporter having export turnover exceeding Rs.10 crores.

Prayer in W.P.No.6192 of 2008: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records in G.I.No.309-H/A.Y.2001-02 PAN AABFH9225K dated 31.03.2007 relating to the assessment year 2001-02 on the file of the 1st respondent and quashing the same, since the provisions of Sections 3 & 4 of the Taxation Laws (Amendment) Act, 2005 are ultra vires Articles 14,19, 265 and other provisions of the Constitution of India.

For Petitioner : Mr.R.Kumar
for Mr.R.Karthikeyan
(in W.P.Nos.4699 & 4700/2007)

: Mrs.Sree Lakshmivalli
for Mr.N.Muthukumar
(in W.P.Nos.2492/2007 & 6192/2008)

For Respondents : Mrs.Hema Muralikrishnan, SSC
(in all WPs)

COMMON ORDER

The learned counsels appearing on either side do not dispute the fact that the issue involved in these Writ Petitions is covered by a decision of the Hon'ble Supreme Court, in the case of Commissioner of Income-tax Vs. Avani Exports reported in [2015] 58 Taxmann.com 100 (SC), wherein, the Hon'ble Supreme Court, considered the validity of the amendment to Section 80 HHC (3) of the Income Tax Act, 1961, in which, third and fourth proviso to Section 80HHC were inserted by Taxation Laws (Second Amendment) Act, 2005, with retrospective effect from 1-4-1998. By virtue of the said amendment, two categories of exporters, viz., those, whose exports were less than Rupees Ten crores, and those exporters, whose export turnover was more than Rupees Ten crores. It provided that, deduction in respect of exporters having a turnover of more than Rupees Ten crores would be available only if they had satisfied two conditions stipulated in third and fourth proviso to the said amendment. All the exporters, including assessees, contended that these conditions are severable, and, therefore, these conditions should be declared as ultra vires. The High Court accepted the contentions of the exporters/assessees and quashed the impugned amendment only to extent that the operation of said Section could be given effect from the date of amendment, and not in respect of earlier assessment years. Accordingly, the Hon'ble Supreme Court confirmed the view taken by the High Court, and held that the conditions stipulated in third and fourth proviso to Section 80HHC of the Income Tax Act, would not operate retrospectively, and cases of exporters, having a turnover below Rupees Ten crores, and those above Rupees Ten crores, would be treated similarly during the period prior to amendment.

2. It is not disputed that, in the instant cases, assessment pertains to the years 2001-02 and 2004-2005, i.e., prior to the amendment. Accordingly, by applying the ratio in the case of Commissioner of Income-tax Vs. Avani Exports (referred supra), the impugned orders of assessment, dated 29.11.2006 and 31.03.2007, are quashed, insofar as it relates to the claim on deduction under Section 80HHC of the Income Tax Act.

3. In the result, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Union of India,
   Ministry of Finance,
   North Block, New Delhi.

2. The Central Board of Direct Taxes,
   Ministry of Finance,
   North Block, New Delhi.

3. The Assistant Commissioner of Income Tax,
   Company Circle-I(1),
   Aayakar Bhavan,
   No.34, Nungambakkam High Road,
   Chennai - 600034.

4. The Joint Commissioner of
   Income Tax,
   Tambaram Range,
   Tambaram, Chennai - 600045.

5. The Assistant Commissioner of
   Income Tax,
   Circle I,
   Puducherry.

+4ccs to Mrs.Hema Muralikrishnan , Advocate SR.No. 59548,59549,59547,59560

+2ccs to M/s.Mallika Srinivasan , Advocate SR.No. 59421,59423

W.P.Nos.4699, 4700, 2492 of 2007
and 6192 of 2008
and
M.P.Nos.1 to 1 of 2007

A.SK(22/08/2019)