IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.6204 to 6207 & 5348 of 2007
and
M.P.Nos.1 to 1 of 2007 in W.P.Nos.6204 to 6207 of 2007
and
M.P.Nos.1 & 2 of 2007 in W.P.No.5348 of 2007

R.Asokan ...Petitioner in WP.Nos.6204 to 6207/2007

M/s.Devi Marine Food Exports Ltd.,
3/284, Muttukadu Road,
Chennai - 600041. ...Petitioner in WP.No.5348 of 2007

Vs

1. Union of India,
Rep. by its Secretary to Government,
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-VI(1),
Aayakar Bhavan,
No.34, Nungambakkam High Road,
Chennai - 600034.

4. Income Tax Officer (OSD),
Company Circle-VI(1),
Aayakar Bhavan,
No.34, Nungambakkam High Road,
Chennai - 600034. ...Respondents in WP.Nos.6204 to 6207/2007

1. The Union of India,
Rep. by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chief Commissioner of Income tax,
121, Uttamar Gandhi Salai,
Chennai - 600034.

3. The Commissioner of Income Tax,
Company Circle,
121, Uttamar Gandhi Salai,
Chennai - 600034.

4. The Income Tax Officer (OSD),
Company Circle I(4),
Chennai - 600034. ...Respondents in WP.No.53448 of 2007

Prayer in W.P.No.6204 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 assessment order as made in GIR/PAN No.S-123(P)/AADPR6951J, dated 11.10.2006 for the assessment year 2004-2005 on the file of the 4th respondent, quash the same, and consequently direct the 4th 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.6205 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 assessment order as made in GIR/PAN No.S-123(P)/AADPR6951J, dated 11.05.2006 for the assessment year 2001-2002 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.6206 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 assessment order as made in GIR/PAN No.S-123(P)/AADPR6951J, dated 22.12.2006 for the assessment year 2000-2001 on the file of the 4th respondent, quash the same, and consequently direct the 4th 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.6207 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 assessment order as made in GIR/PAN No.S-123(P)/AADPR6951J, dated 06.03.2006 for the assessment year 2003-2004 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.5348 of 2007: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of declaration, declaring that provision under Section 3 & 4 of Taxation Laws (Amendment) Act, 2005, insofar as it seeks to deny the deduction under Section 80HHC in respect of profits on sale of DEPB in case of exporter having export turnover exceeding Rs.10 crores with retrospective effect, as ultra vires the Constitution of India.

For Petitioner : Ms.P.Jayalakshmi
for Mr.R.Karthikeyan
(in WP.Nos.6204 to 6207/2007)

: Mr.T.Ramesh
(in WP.No.53448 of 2007)

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

C O M M O N   O R D E R

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. In the instant cases, assessments pertains to the years 2000-2001, 2001-2002, 2003-2004 and 2004-2005, i.e., prior to the amendment. Accordingly, by following the decision of the Hon'ble Supreme Court, in the case of Commissioner of Income-tax Vs. Avani Exports (referred supra), the impugned orders of assessment dated 11.10.2006, 11.05.2006, 22.12.2006 and 06.03.2006, 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 (CS-V)

//True Copy//

Sub Assistant Registrar

hvk

To

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

2. The Central Board of Direct Taxes,
Ministry of Finance, North Block,
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7. The Secretary,
The Union of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

8. The Income Tax Officer (OSD),
Company Circle I(4),
Chennai - 600034.

+1 cc to M/s.T.Ramesh, Advocate, S.R.No.60163

+4 ccs to M/s.P.Jayalakshmi, Advocate, S.R.Nos.58854 & 58857

+5 ccs to M/s.Hema Muralidharan, Advocate, S.R.Nos.59550 & 59554

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W.P.No.5348 of 2007

RV(CO)
SSM(27/08/2019)