IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.1636 to 1638 of 2010 (3 Wps)
and
M.P.Nos.1 to 1 of 2010 (3 Mps)

M/s.R.R.Leather Products Pvt. Ltd.,
214, SIDCO Industrial Estate,
Ambattur,
Chennai-600 034. ...Petitioner in all WPs

Vs

The Assistant Commissioner of Income-Tax,
Company Circle V (4),
Mahatma Gandhi Road,
Chennai-600 034. ...Respondents in all WPs

Prayer in W.P.No.1636 of 2010: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records pertaining to the order dated 31.12.2009 bearing PAN AAACR3647K for the Assessment Year 1999-2000 on the file of the Assistant Commissioner of Income Tax Company Circle V (4) Chennai, the respondent herein, quash the same.
Prayer in W.P.No.1637 of 2010: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records pertaining to the order dated 31.12.2009 bearing PAN AAACR3647K for the Assessment Year 2001-2002 on the file of the Assistant Commissioner of Income Tax, Company Circle V (4) Chennai, the respondent herein, quash the same.

Prayer in W.P.No.1638 of 2010: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records pertaining to the order dated 31.12.2009 bearing PAN AAACR3647K for the Assessment Year 2002-2003 on the file of the Assistant Commissioner of Income Tax, Company Circle V (4) Chennai, the respondent herein, quash the same.

For Petitioner : Ms.E.Malini
for M/s.Pass Associates (in all Wps)

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 1999-2000, 2001-02 and 2002-2003, i.e., prior to the amendment. Accordingly, there will be a declaration in terms of the decision of the Hon'ble Supreme Court, in the case of Commissioner of Income-tax Vs. Avani Exports (referred supra) and consequently, the impugned orders of assessment, dated 31.12.2009, 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-VIII)

//True copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income-Tax,
Company Circle V (4),
Mahatma Gandhi Road,
Chennai-600 034.

+3cc toM/s.Pass Associates, Advocate SR.No.62287 to 62289

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.62093

W.P.Nos.1636 to 1638 of 2010 (3 Wps)
and
M.P.Nos.1 to 1 of 2010 (3 Mps)

SPD(CO)
GMY(21/08/2019)