IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.3818 of 2008
and
M.P.No.1 of 2008

M/s.K.R.M.Marine Exports,
Rep. by its Partner
Mrs.Maheswari,
Presently having its office at
Z-181, First Floor,
Block No.61, 5th Avenue,
Anna Nagar, Chennai - 600040. ...Petitioner

Vs

1. Union of India,
Rep. by its Secretary to Government,
Ministry of Finance,
Government of India
New Delhi.

2. Commissioner of Income Tax (Appeals)-XII,
121, Mahatma Gandhi Road,
Chennai - 600034.

3. The Assistant Commissioner of
Income Tax,
Circle XIII (i/c),
Chennai - 600006.

4. The Tax Recovery Officer XXVI,
Range-XIII, Room No.603,
6th Floor, New Block,
Ayakar Bhawan,
121, Mahatma Gandhi Road,
Chennai - 600034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the 4th respondent in TRC.No.468/06-07 dated 22.01.2008 and quash the same.

For Petitioner : Mr.K.Duraivarman
for Mr.Rathina Asohan

For Respondents : Mrs.Hema Muralikrishnan, SSC

ORDER

The learned counsels appearing on either side do not dispute the fact that the issue involved in the present Writ Petition 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 case, assessment pertains to the year 2002-2003, 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 order of assessment, dated 22.01.2008, is quashed, insofar as it relates to the claim on deduction under Section 80HHC of the Income Tax Act.

3. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary,
Union of India,
Ministry of Finance,
Department of Revenue,
Centrl Secretariat,
North Block,
New Delhi- 110001.

2. Commissioner of Income Tax (Appeals)-XII,
121, Mahatma Gandhi Road,
Chennai - 600034.

3. The Assistant Commissioner of
Income Tax,
Circle XIII (i/c),
Chennai - 600006.

4. The Tax Recovery Officer XXVI,
Range-XIII, Room No.603,
6th Floor, New Block,
Ayakar Bhawan,
121, Mahatma Gandhi Road,
Chennai - 600034.

+1 cc to M/s.Rathina Asohan, Advocate, S.R.No.59113

+1 cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.59559

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