In the High Court of Judicature at Madras

Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.466 of 2012

The Commissioner of Income Tax, Chennai ...Appellant

Vs

M/s.Nithya Packaging P. Ltd., Pondicherry-1 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.7.2012 in ITA No.844/Mds/2012 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2008-09, against the order of the Commissioner of Income Tax (Appeals)-XII, Chennai 34, in ITA No.246/2010-11, dated 24/01/12, for the Assessment Year 2008-09.

For Appellant : Mr.T.Ravikumar, SSC

For Respondent : M/s.Subbaraya Aiyar Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The appeal was admitted on 04.1.2013 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 law in holding that the scrap ales generated is eligible for deduction under Section 80IB of the Income Tax Act, 1961 ?

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the income from treatment of expenses of earlier years as income, insurance claim received and gain from exchange differences are relatable to the manufacturing activity of the assessee and as such, eligible for computation of deduction under Section 80IB of the Act? And

iii. Is not the finding of the Tribunal perverse as it has not gone into the aspect for finding out that the income was not directly connected with the assessee's manufacturing activity while allowing the deduction under Section 80IB?”

3. The Revenue seeks to withdraw this appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Madras 'D' Bench.p

2.The Commissioner of Income Tax Appeals (XII), Chennai.

3.The Assistant Commissioner of Income Tax,
Circle-I, Pondicherry.

+1cc to Mrs.R.Hemalatha, Advocate Sr.281
+1cc to Mr.Subbaraya Aiyar, Padmanabhan, Advocate sr.221

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srg 20/02/2019