IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.160 of 2015

Commissioner of Income Tax
No.63, Race Course Road
Coimbatore. ... Appellant

Vs.

M/s.Arun Textiles Pvt. Ltd.
No.80, Perumal Koil street
Tirupur - 641 604.
PAN:AABCA8982 D ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 12.09.2014 made in ITA No.268/Mds/2014,

as against the order of the Commissioner of Income Tax (Appeals)-II, Coimbatore made in IT Appeal No.233/11-12 dated 11/12/2013 as against the order of the Assistant Commissioner of Income Tax Company Circle in PAN/GIR No.AABCA89821) dated 23/12/2011 for the Assessment Year 2009-10.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel
assisted by Ms.K.G.Usha Rani
Junior Standing Counsel

For Respondent : Mr.N.V.Balaji

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income

Tax Appellate Tribunal, Madras 'B' Bench, dated 12.09.2014 in ITA No.268/Mds/2014, by raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the proceeds realized by the assessee on sale of Certified Emission Reduction Credit, which the assessee had earned on the Clean Development Mechanism in its wind energy operations, is a capital receipt and not taxable?

2.Whether, in the facts and circumstance of the case and in law, the Appellate Tribunal is correct in holding that sale of Carbon Credits is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?

3. Whether, in the facts and circumstances of the case and in law, ITAT is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?”

2. When the matter is taken up for hearing, the learned Senior Standing Counsel for the Department brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019, dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore only).

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed, as not pressed, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.Income Tax Appellate Tribunal
Madras 'B' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals-II),
Coimbatore.

3.The Assistant of Income Tax Company Circle,
Tiruppur.

+1cc to Mr.N.V.Balaji, Advocate Sr.78195
+1cc to Mr.T.R.Senthilkumar, Advocate Sr.78050

TCA No.160 of 2015

spd[co]
srg 23/10/2019