In the High Court of Judicature at Madras

Dated :28.08.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.461 and 462 of 2018
and C.M.P.No.9837 of 2018 in T.C.A.No.462 of 2018

Principal Commissioner of Income Tax-3,
No.63, Race Course Road, Coimbatore. ...Appellant/Respondent

Vs

M/s.Armstrong Knitting Mills Pvt. Ltd.,
61-C, Saminathapuram, 2nd Street,
Anupparpalayam Post, Tirupur - 641 652.
PAN: AAECA3667Q ...Respondent/Appellant

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 06.01.2016 made in ITA.No.747/Mds/2014 and ITA>No.1725/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment years 2009-10 and 2010-11, against the order dated 27/03/2014 made in IT.Appeal NO.109/12-13 on the file of the Commissioner of Income-Tax (Appeals)II, Coimbatore for the Assessment year 2010-11 and against the order dated 24/12/13 made in IT.Appeal.No.220/11-12 on the file of the Commissioner of Income Tax(Appeals)II, Coimbatore for the assessment year 2009-2010, and against the order dated 06/02/2013 made in AAFFA1226P on the file of the Assistant Commissioner of Income Tax, Circle-1, Tirupur for the Assessment year 2010-11 and against the order dated 23/12/2011 made in AAECA3667Q on the file of the Assistant Commissioner of Income-Tax, Company Circle, Tirupur for the Assessment year 2009-10.

For Appellant : Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani

For Respondent: Mr.R.Senniappan

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Counsel appearing for the appellant - Revenue and Mr.R.Senniappan, learned counsel appearing for the respondent - Assessee.

2.These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 06.01.2016 made in ITA.No.747/Mds/2014 and ITA>No.1725/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment years 2009-10 and 2010-11.

3.The appeals have been filed by raising the following substantial questions of law :

"TCA.No.461 of 2018:

1.Whether 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 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 the 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?

TCA.No.462 of 2018:

1.Whether the Tribunal is correct in law in holding that the assessee is entitled to claim deduction u/s.80-IA of the Income Tax Act?

2.Whether the Tribunal is correct in law in holding that unabsorbed depreciation of earlier years, before the first year of claim, which has already been absorbed, should not be notionally carried forward and taken into consideration for computation of deduction under Section 80-IA of the Act?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

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

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

3.The Assistant Commissioner of Income Tax,
Circle-1, Tirupur.

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.NO. 74190
+1cc to Mr.R.Senniappan, Advocate sr.75083

TCA.Nos.461 and 462 of 2018
and C.M.P.No.9837 of 2018
in T.C.A.No.462 of 2018

sr(co)
nr 05/11/2019