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.678 OF 2014

The Commissioner of Income Tax, Chennai ...Appellant

Vs

M/s.Sundaram Brake Linings Ltd., Chennai-50 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.8.2013 in ITA No.2093/Mds/2012 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2009-10. against the order of the Commissioner of Income Tax (Appeals)-V, Chennai made in ITA.NO.367/2011-12 order dated 14.09.2012 and against the order of the Assistant Commissioner of Income Tax, Company Circle VI (4) Chennai made in PAN/GIR.No.AADCS4888E order dated 30.12.2011 for the Assessment year 2009-10.

For Appellant : Mr.T.R.Senthilkumar, SSC and Ms.K.G.Usharani, JSC
For Respondent : M/s.Subbaraya Aiyer Padmanabhan

ORDER
Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned 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 27.10.2014 on the following substantial questions of law :

“i. Whether, under the facts and in the circumstances of the case, the Tribunal was correct in deleting the disallowance made by the Assessing Officer towards export commission paid by the assessee to the non resident, on which, it failed to deduct tax at source ?

ii. Whether, under the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee has no liability to deduct tax at source on the payment made to non resident towards export commission ?

iii. Whether, under the facts and in the circumstances of the case, the Tribunal was correct in holding that the non resident has no business connection for the export commission received from the assessee ? And

iv. Whether, under the facts and in the circumstances of the case, the Tribunal was correct in holding that the Assessing Officer did not establish the existence of business connection and therefore, there is no liability to deduct tax at source without appreciating that the onus is on the assessee to show that it is not liable to deduct at source ?"

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

RS

To

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

2. The Commissioner of Income Tax (Appeals)-V,
121, Mahatma Gandhi Road, Chennai-34.

3. The Assistant Commissioner of Income Tax,
Company Circle VI(4), 7th Floor New Block,
Room No.705, 121, Mahatma Gandhi Road,
Chennai-34.

+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.212
+1cc to M/s.Subbaraya Aiyer Padmanabhan, Advocate, S.R.No.220

TCA.No.678 of 2014

CP(CO)
CS/19/02/2019