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 Nos.434 and 435 of 2017 & CMP.No.10849 of 2017

The Commissioner of Income
Tax, Corporate Circle 2, Madurai

...Appellant/Appellant in both the appeals

Vs

Mepco Industries Limited,
Madurai-2.

...Respondent/Respondent in both the appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 30.12.2016 respectively in ITA.Nos.2428 and 2429/ Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench respectively for the assessment years 2012-13 and 2013-14 and against the order of the Commissioner of Income -Tax (Appeals-I) and made in ITA.Nos.0059/2015-16 of ITA.Nos.0206/2015-16 dated:13/05/2016 for the Assessment year 2012-13 & 2013 & against the order of the Deputy Commissioner of Income Tax Corporate Circle and made in PAN.No.AAACM7886M dated:26/02/2016 & 31/03/2015 for the Assessment year 2012-13&2013-14.

For Appellant :Mr.M.Swaminathan, SSC and
Ms.V.Pushpa, JSC & Ms.S.Premalatha, JSC
For Respondent:Mr.R.Kumar

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COMMON JUDGMENT

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

Heard the learned Standing Counsel for the appellant.

2. These appeals by the Revenue challenge the common order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The appeals have been filed raising the following substantial questions of law :

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"i. Whether the Income Tax Appellate Tribunal is correct in law in holding that the assessee is entitled to claim deduction under Section 80IA irrespective of whether the product is sold by it in open market or used by itself for consumption in its other plants or units ?

ii. Whether the Income Tax Appellate Tribunal is right in holding that the profit arising on the steam generated and consumed albeit captively can be subjected to deduction as long as it is an output of the assessee unit, it matters little whether it is the principal or a by-product ? And

iii. Whether the Income Tax Appellate Tribunal was right in following the decision of the TANFAC Industries Limited, which is not squarely applicable to the present case because in the former case, the issue is whether the assessee is entitled to deduction under Section 80I, when it had captively consumed the gas produced by it whereas in the present case, the assessee claimed deduction under Section 80IA on the steam produced as a by-product in its gas power division where electricity is generated by using natural gas, which is used for captive consumption in its chlorate division?"

3. The Revenue seeks to withdraw these appeals 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, these appeals are dismissed as withdrawn and the substantial questions of law raised are left open. In the event, in any of the cases, 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 appeals to be heard and decided on merits. No costs. Consequently, the connected CMP is also dismissed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Deputy Commissioner of Income Tax,
Corporate Circle-2, Madurai.

3.The Commissioner of Income-Tax(Appeals-I),
Madurai.

+1cc to Mr.H.Swaminathan, Advocate, S.R.No.58

TCA.Nos.434 & 435 of 2017
and CMP.No.10849 of 2017

VGII(CO)
GSP(06/02/2019)

HIGH COURT OF JUDICATURE MADRAS
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