IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R. HEMALATHA

Tax Case Appeal No.516 of 2010

Commissioner of Income Tax-III,
Chennai. ... Appellant

Vs.

M/s.Rajkumar Impex Pvt. Ltd.,
B-603, Keshav Dugar Apartments,
No.1, East Avenue,
Keshav Perumal Puram,
R.A.Puram, Chennai - 600 028. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench, dated 16.10.2009 passed in I.T.A.No.93/Mds/2009 against the order of the Commissioner of Income Tax (Appeals)-V Chennai-34 dated 09/06/2008 madein ITA No.592/2006-07 and against the order of the Income Tax Officer (OSD), Company Circle -V(3), Chennai dated 27/12/2006 in P.A.No.GIR No.AAACR35773/53088-R for the assessment Year 2004-05.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel
and Mrs.R.Hemalatha
Standing Counsel

For Respondent : Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar Padmanabhan

J U D G M E N T
(Delivered by M.DURAISWAMY, J.)

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 16.10.2009 passed by the Income Tax Appellate Tribunal, Chennai "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.93/Mds/2009 for the assessment year 2004-05. The above appeal has been admitted on 29.06.2010 on the following Substantial Questions of Law:

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to the deduction u/s.80IA on the disallowance made u/s.40A(3) even though such disallowance could not be considered as income 'derived' from the eligible industrial undertaking in the light of the decisions of Supreme Court in Cambay Electric Supply Industrial Co. Ltd. v. Commissioner of Income Tax (113 ITR 84). Pandian Chemicals Ltd. v. Commissioner of Income Tax (262 ITR 278) and Commissioner of Income Tax v. Sterling Foods (237 ITR 579)?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the face value of DEPB is chargeable to tax on accrual basis and that the profit on sale of DEPB representing the excess of sale proceeds of DEPB over its face value is liable to be considered u/s.28(iiid) at the time of its sale?

3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the scheme of DEPB is not an automatic benefit to an exporter in the form of cash assistance; but arises only on making application to the concerned authority pursuant to exports and is in the nature of 'benefit of perquisite arising out of business' and therefore is chargeable to tax u/s.28(iv)?"

2. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel and Mrs.R.Hemalatha, learned Standing Counsel for the appellant/Revenue and Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the respondent/assessee.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4.Learned counsel for the respondent/assessee submitted that the assessee had availed the Vivad Se Vishwas Scheme and that the respondent/assessee had already been issued with Form-5 on 22.04.2021.

5.Since the respondent/assessee had been issued with Form-5, nothing survives for adjudication in the above appeal. Recording the submission made by the learned counsel for the respondent/assessee, the Tax Case Appeal stands disposed of. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal, Chennai "B" Bench

2.The Commissioner of Income Tax-III,
Chennai.

3. The Commissioner of Income Tax(Appeals)-V
Chennai.

4. The Income Tax Officer(OSD)
Company Circle -V(3),
Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR.No.26523

Tax Case Appeal No.516 of 2010

GP(CO)
GMY(01/07/2021)