IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.01.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.786 of 2010

Commissioner of Income Tax-1,
Tiruchirapalli ... Appellant/Respondent

v.

M/s. R.K. Textiles,
No.292, Mahatma Gandhi Road,
Bharathi Nagar,
Karur - 639 002. ... Respondent/Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 29.01.2010 in ITA.No.1701/Mds/2009 for the Assessment Year 2005-06 against the order of the Commissioner of Income Tax (Appeals) Trichirappalli dated 24/08/2009 in ITA.No.119/2007/2008 and against the order of the Deputy Commissioner of Income Tax Circle II, Trichy dated 16/11/2007 in PAN/GIR No.AAAFR 662011 for the Assessment year 2005-2006.

For Appellant : Ms. V. Pushpa
Standing Counsel

For Respondent : Mr. N. Quadir Hoseyn

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

We have heard Ms. V. Pushpa, learned Standing Counsel for the appellant/Revenue and Mr. N.Quadir Hoseyn for the respondent/ Assessee.

2. The appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 29.01.2010 made in ITA.No.1701/Mds/2009 on the file of the Income Tax Appellate Tribunal, Chennai, ''C'' Bench (for brevity, the Tribunal) for the Assessment Year 2005-06.

3. The appeal was admitted on 10.08.2010 on the following substantial questions of law:

> "(i) Whether on the facts and circumstances of the case, the 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 under section 29(iiid) at the time of sale?
>
> (ii) Whether on the facts and circumstances of the case, the 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 under section 28(iv)?
>
> (iii) Whether on the facts and circumstances of the case, the the Income Tax Appellate Tribunal was right in directing the Assessing Officer to allow depreciation at 80% on the electrical fittings and installation relating to the transformer which is separate from the Wind Mill and therefore, was entitled for depreciation only at 15%?
>
> (iv) Whether on the facts and circumstances of the case, the the Income Tax Appellate Tribunal was right that the assessee was entitled to deduction under section 80HHC(3) when the conditions under the proviso to section 80 HHC (3) have not been satisfied cumulative?

4.The learned Standing Counsel appearing for the appellant submits that the above appeal is not pursued by the Revenue on account of the Low Tax Effect in terms of Circular No.17/2019 dated 08.08.2019 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 this case is less than the threshold limit.

5.In the light of the said submissions, the above Tax Case Appeal is dismissed as withdrawn on account of the Low Tax Effect. The substantial questions of law framed are left open. In the event the tax effect in this case 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 appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
   Chennai, "C" Bench

2. The Commissioner of Income Tax,
   Trichirappalli.

3 The Deputy Commissioner of Income Tax,
  Circle II, Trichy.

+1cc to Mr.M. SWAMINATHAN, Advocate, S.R.No.3978
+1cc to Mr.N. QUADIR HOSEYN, Advocate, S.R.No.3992

AJS(CO)
SM/12/02/2021

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