IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.2367 OF 2012
AND
M.P.NOS.2 & 3 OF 2012

M/s.Aircel Limited,
Spencer Plaza 1st floor,
769, Anna Nagar,
Chennai - 600 002,
Rep.by Mr.K.Raghuraman ... Petitioner

Vs.

1. The Union of India,
   Rep.by Secretary to Government,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Joint Commissioner of Income Tax (OSD),
   Company Circle - I (1), Room No.611, 6th Floor,
   New Black - Aayakar Bhavan,
   121, Uthamar Gandhi Salai,
   Nungambakkam, Chennai - 600 034. ... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent comprised in the impugned order dated 30.12.2011 and the rectification order dated 18.01.2012 and all proceedings pursuant thereto including the notices of demand and quash the same as unconstitutional and consequently direct respondents to undertake a fresh income tax assessment of the petitioner for the Assessment Year 2009-2010 giving effect to the deduction under Section 80-IA.

For Petitioner : Mr.Vishnu Mohan
For Mr.R.Parthasarathy

For Respondent : Mr.D.Prabhu Mukunth Arunkumar
Standing Counsel for Income Tax

ORDER

The writ on hand is filed challenging the Assessment Order passed by the second respondent on 30.12.2011 and consequential Rectification Order dated 18.01.2012.

2. The learned counsel for the petitioner strenuously contended that the deduction under Section 80 IA of the Income Tax Act was not granted to the writ petitioner and thus the Assessment Order is perverse. The petitioner has stated that they are entitled to claim deduction under Section 80 IA of the Act and the said benefit can be claimed within a period of 10 years. As far as the Assessment Order 2009 - 10 is concerned, the petitioner filed return of income with loss account. Thus, they had not claimed any deduction under Section 80 IA of the Act and this fact was also not considered by the respondents. At the outset, it is contended that the order of assessment is improper and not in consonance with the informations and particulars provided in its return of income and with reference to the other documents.

3. The learned counsel for the petitioner brought to the notice of this Court that during the pendency of the writ petition, the petitioner filed an appeal before the Appellate Authority namely Commissioner of Income Tax (Appeals) and in view of the fact that the writ petition is pending for long years, the petitioner has not pursued the appeal and the said appeal was dismissed for non-prosecution. Therefore, the petitioner has filed further appeal before the ITA in ITA No.2038/CHY/2018 and the said appeal is still pending.

4. This Court is of the considered opinion that all the disputed facts raised by the petitioners regarding the application of Section 80 IA of the Act as well as the errors in computation of income are to be adjudicated before the ITA. The petitioner is at liberty to raise all the disputed facts and objections before the Tribunal and the Tribunal shall look into those aspects, considering the case on merits and in accordance with law.

5. As far as the present writ petition is concerned, the petitioner filed an appeal before the CIT (Appeals), was dismissed as non- prosecution and the further appeal filed in ITA No.2038/CHY/2018, and the same is pending before the ITA. Thus, all the grounds raised in the present case shall be raised before the ITA, who is empowered to consider the same in accordance with law.

6. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous

petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pns

To

1. The Secretary to Government,
   The Union of India,
   Ministry of Finance,
   Department of Revenue,
   New Delhi.

2. The Joint Commissioner of Income Tax (OSD),
   Company Circle – I (1), Room No.611, 6th Floor,
   New Black – Aayakar Bhavan,
   121, Uthamar Gandhi Salai,
   Nungambakkam, Chennai – 600 034.

+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.31864

W.P.NO.2367 OF 2012

PCH(CO)
PBS/10/08/2021