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In the High Court of Judicature at Madras

Dated:- 27.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No. 73 of 2004

The Commissioner of Income Tax-I
Chennai. .. Appellant

Vs

M/s.Tractors & Farm Equipment Ltd.,
Chennai. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 30.4.2003 made in I.T.A.No.467/Mds/1995 for the assessment year 1991-92 against the order of the Commissioner of Income tax Appelas, Madras in ITA.No. 19/94-95 dated 7.123.1994 against the order of the Deputy Commissioner of Income Tax Special Range-I Madras dated 28/2/94 and made in PAN/GIR 47-004-CT 7442/I-T.

For Appellant : Mr.J.Narayanasamy
For Respondent: Mr.R.Venkatnarayan
for M/s.Subbaraya Aiyar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

This appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'C' Bench made in I.T.A.No.467/Mds/1995 dated 30.4.2003.

2. The material facts of the case are as follows:-

The relevant assessment year is 1991-92. The assessee for the said assessment year filed its return and the assessing officer inter alia disallowed the claim of the assessee pertaining to expenditure on Farm, building tax, Voluntary Retirement scheme. The assessing officer restricted the depreciation claim on machinery purchased from IDBI and also recomputed the deduction under section 80HHC by excluding the cash

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compensatory support from the business profit. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Tribunal and the Tribunal dismissed the appeal.

3. We heard the learned counsel on either side and perused the materials on record.

4. Learned counsel for the revenue submitted that though three questions of law are formulated in the grounds of appeal, the one and only question of law required consideration by this Court is the third question of law. The other two questions of law are formulated as such but they are factual in nature, which require no consideration by this Court. The third question of law framed runs as under:

> "Whether in the facts and circumstances of the case, the Tribunal was right in observing that other receipts other than cash compensatory support has to be excluded from the business profit for the purpose of deduction under Section 80 HHC?

5. With reference to the substantial question of law framed as above, both the Commissioner of Income Tax (Appeals) as well as the Tribunal erred in relying on explanation (baa) introduced to sub-section (4C) of Section 80HHC which came to be inserted with effect from 1.4.1992 under the Finance (No.2) Act 1992. It is apparent that the explanation (baa) so inserted with effect from 1.4.1992 cannot be made applicable to the assessment year in question, which is 1991-92. Even the reasoning given by the Tribunal also would not go along with the first part of the reason. The reason reads as follows:-

> "The explanation (baa) to Section 80HHC of the Act, effective for the assessment year under appeal, states that 90% of the cash compensatory support would have to be deducted from the profits for working out the export profits. The net amount so determined would be the profit of the business which would have to be apportioned in the ratio of export turnover to total turnover. This amount would then be added by 90% of the cash compensatory support. The sum total of these two figures would be the export profit for which deduction u/s 80HHC of the Act is available. The A.O. Would recalculate the same on the above basis."

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In view of the inconsistent reason given and also applying a provision, which was not obtaining during the relevant period, we are of the view that the order of the Tribunal has to be set aside and the matter should be remitted back to the Tribunal for reconsideration of the issue in accordance with the statutory provision which was available during the relevant assessment period. Hence, by allowing the tax case appeal, the order of the Tribunal is hereby set aside and the matter is remitted back to the Tribunal to reconsider the issue as stated above.

krr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90.
2.The Commissioner of Income Tax appeals V Chennai.
3. The Deputy Commissioner of Income Tax, Special Range -I, Madras
4. The Commissioner of Income Tax-I Chennai.
+ One cc to M/s Pusya Sitaraman, Advocate sR 53446
LA (co)
sg 17/9/07

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