Court No. - 34

Case :- INCOME TAX APPEAL No. - 194 of 2016

Appellant :- Pr. Commissioner Of Income Tax, Bareilly
Respondent :- M/S L.H. Sugar Factory Pvt. Ltd. Pilibhit
Counsel for Appellant :- Ashok Kumar,Ashish Agrawal
Counsel for Respondent :- Suyash Agarwal

Hon'ble Sudhir Agarwal,J.
Hon'ble Kaushal Jayendra Thaker,J.

1. Sri Ashish Agrawal, learned counsel for appellant and Sri R.R. Agrawal, learned Senior Advocate assisted by Sri Suyash Agrawal, Advocate for respondent.

2. We are not giving details of factual aspects of matter since question sought to be raised before this Court as substantial question of law is already covered by some judgments and, therefore, only legal aspects have been considered.

3. This appeal under Section 260-A of Income Tax Act, 1961 has arisen from the judgment and order dated 09.02.2016 passed in ITA No. 418/LKW/2013 by Income Tax Appellate Tribunal, Lucknow Bench 'B', Lucknow.

4. Though appellant has framed four substantial questions of law but learned counsel for appellant could not dispute that except Question no. (A), rest are not substantial questions of law, since based on factual aspects, covered by findings of fact recorded by authorities below, hence as agreed by learned counsel for parties, we have heard appeal finally at this stage on the following substantial question of law:

> "Whether under the facts and circumstances of the case, the ITAT was justified in deleting the addition made by Assessing Officer on account of Carbon Credit Rs. 2,77,08,800/- as it can be safely concluded by following the decision of ITAT Cochin Bench in order dated 07.03.2014 passed in ITA No. 4 (Coch.) of 2013 that the earning of Carbon Credit is primarily linked with the very

activity of generation of electricity and it cannot be separated from the same under any circumstances and the income on sale of Carbon Credit would form part of chargeable income under Income Tax Act, 1961.

5. Learned counsel for the appellant submitted that aforesaid question has been answered by Cochin Bench of Income Tax Appellate Tribunal in **Apollo Tyres Ltd. Vs. Assistant Commissioner of Income Tax, (2014) 31 ITR (Trib) 477** wherein it has held that "Carbon Credit" is not capital in nature but revenue receipt hence taxable.

6. Per contra, learned counsel appearing for respondent-Assessee submitted that Hyderabad Bench of Income Tax Appellate Tribunal in **My Home Power Ltd. Vs. Deputy CIT, (2013) 21 ITR (Trib) 186** has taken an otherwise view which has been confirmed by Andhra Pradesh High Court in **Commissioner of Income Tax Vs. My Home Power Ltd., (2014) 365 ITR 82,** and Court has said as under:

> *"3. We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "carbon credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns". We agree with the factual analysis as the assessee is carrying on the business of power generation. The carbon credit is not even directly linked with power generation. On the sale of excess carbon credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."*

7. He also submitted that Chennai Bench of Income Tax Appellate Tribunal in **India Dyeing Mills (P.) Ltd. Vs. Assistant Commissioner of Income Tax, (2014) 36 ITR (Trib) 55** has considered judgments of Hyderabad Bench of Tribunal as well as Andhra Pradesh High Court in

My Home Power Ltd. (supra) and Cochin Bench Tribunal's judgment in **Apollo Tyres Ltd. (supra)** and thereafter following Andhra Pradesh High Court's judgment, has held that “Carbon Credit” is capital in nature.

8. Learned counsel for appellant could not show that judgment of Andhra Pradesh High Court was taken in appeal. Even otherwise, nothing substantial has been argued on behalf of appellant so as to pursue us to take a view that “Carbon Credit” is not capital in nature but revenue receipt. Hence we find ourselves in agreement with the view taken by Andhra Pradesh High Court in **My Home Power Ltd. (supra)** and answer aforesaid question against Revenue and in favour of Assessee.

9. The appeal is accordingly dismissed.

Order Date :- 01.08.2016
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