IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06.09.2016
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.13909 and 13910 of 2008
and
M.P.No.1 of 2008

Shri Geral Pereira
49, Pachaiappa's College Hostel Road,
Chetpet, Chennai - 600 031. ...Petitioner in both W.Ps.

Vs.

1. The Income Tax Officer,
Ward - XV (1)
121, Nungambakkam High Road,
Chennai - 600 034.

2. The Commissioner of Income-Tax (Appeals XII)
121, Mahatma Gandhi Road,
Nungambakkam, Chennai- 600 034.

3. Union of India,
Ministry of Finance,
rep. by its Secretary,
Department of Revenue,
Central Secretariat, North Block,
New Delhi- 110 001.

...Respondents 1 to 3 in both W.Ps.

Prayer in W.P.No.13909 of 2008

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records in PAN/GIR/No.ACQPG6117L, dated 23.03.2006, on the file of the first respondent, relating to the assessment year, 1998-99, and to quash the same.

Prayer in W.P.No.13910 of 2008

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, to declare the provisions of Sections 28 and 80 HHC by the Taxation Law (Amendment) Act, 2005, as ultra vires, and violative of Articles 14, 19(1) (g), 246(1), 265 and 301 of the Constitution of India, insofar as it seeks to deny the deduction under Section 80 HHC in respect of profit on sale of DEPB in case of exporters, having export turnover exceeding Rupees 10 Crores.

For Petitioner : Dr.Anita Sumanth

For Respondents : Mr..Arun Kurian Joseph
Senior Standing Counsel
for Mr.T.Ravikumar

COMMON O R D E R

Heard Dr.Anita Sumanth, learned counsel appearing for the petitioner, and Mr..Arun Kurian Joseph, learned Senior Standing Counsel, for respondents.

2. The petitioner, in both Writ Petitions, is one Shri Gerald Pereira. In Writ Petition No.13909 of 2008, the petitioner has challenged the order of assessment passed by the first respondent, for the year 1998-99,

dated 23.03.2006. In Writ Petition No.13910 of 2008, the petitioner has sought for issuance of Writ of Declaration, to declare the provisions of Sections 28 and 80 HHC by the Taxation Law (Amendment) Act, 2005, as ultra vires, and violative of Articles 14, 19(1) (g), 246(1), 265 and 301 of the Constitution of India, insofar as it seeks to deny the deduction under Section 80 HHC, in respect of profit on sale of DEPB in case of exporters, having export turnover exceeding Rupees 10 Crores.

3. The learned counsels appearing on either side do not dispute the fact that the issue involved in these Writ Petitions is covered by a decision of the Hon'ble Supreme Court, in the case of (**Commissioner of Income-tax Vs. Avani Exports**) reported in **[2015] 58 Taxmann.com 100 (SC),** wherein, the Hon'ble Supreme Court, considered the validity of the amendment to Section 80 HHC (3) of the Income Tax Act, 1961, in which, third and fourth proviso to Section 80HHC were inserted by Taxation Laws (Second Amendment) Act, 2005, with retrospective effect from 1-4-1998. By virtue of the said amendment, two categories of exporters, viz., those, whose exports were less than Rupees Ten crores, and those exporters, whose export turnover was more than Rupees Ten crores. It provided that,

deduction in respect of exporters having a turnover of more than Rupees Ten crores would be available only if they had satisfied two conditions stipulated in third and fourth proviso to the said amendment. All the exporters, including assessees, contended that these conditions are severable, and, therefore, these conditions should be declared as ultra vires. The High Court accepted the contentions of the exporters/assessees and quashed the impugned amendment only to extent that the operation of said Section could be given effect from the date of amendment, and not in respect of earlier assessment years. Accordingly, the Hon'ble Supreme Court confirmed the view taken by the High Court, and held that the conditions stipulated in third and fourth proviso to Section 80HHC of the Income Tax Act, would not operate retrospectively, and cases of exporters, having a turnover below Rupees Ten crores, and those above Rupees Ten crores, would be treated similarly during the period prior to amendment.

4. It is not disputed that, in the instant cases, assessment pertain to the year 1998-99, i.e., prior to the amendment. Accordingly, there will be a declaration in terms of the decision of the Hon'ble Supreme Court, in the case of **Commissioner of Income-tax Vs. Avani Exports** (referred

supra) and consequently, the impugned order of assessment, dated 23.03.2006, is quashed.

5. In the result, both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.09.2016

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Index : yes/no

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T.S.Sivagnanam, J.

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