

In the High Court of Judicature at Madras

Dated :- 29.11.2007

Coram :

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

W.A.Nos.2769 and 2770 of 2004

M/s.Mepco Industries Limited
(successor to M/s.Karaikal Chlorates)
17-A Vallabai Road
Chokkikulam, Madurai 625 001.
rep. By its Managing Director S.Annamalai ... Appellant/Petitioner

Vs.

1. The Commissioner of Income Tax
Central Revenue Building
V.P.Rathnasamy Nadar Road
Madurai 625 002.

2. The Deputy Commissioner of Income Tax
Special Range II
Madurai. ... Respondents/Respondents

(Cause title accepted vide orders of the Court dated 16.3.2001
in C.M.P.No.4327 and 4328 of 2001)

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 8.12.2000 made in W.P.No.10663 and 10664 of 1998. Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus call for the records in the file of the first respondent in C. No. 407/21/96-97 and quash the impugned order dated 30.3.98 and consequently direct the first respondent to grant relief for the assessment years 1993-94 and 1994-95.

For Appellant :- Mr.N.Srinivasan

For Respondents:- Mr.J.Naresh Kumar

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

The writ appeals are filed by against the order of the learned single Judge dated 8.12.2000 made in W.P.Nos.10663 and 10664 of 1998.

2. The appellant herein preferred revision petitions under Section 264 of the I.T.Act before the Commissioner of Income Tax claiming relief that the electricity subsidy received by the appellant from the Government of India in a sum of Rs.56,16,456 and Rs. 64,56,107/- for the assessment years 1993-94 and 1994-95 respectively may be treated as capital receipt. The Commissioner of Income Tax, the first respondent herein granted the relief as sought for by the appellant herein in his order dated 30.4.1997. However subsequent to that a rectification proceedings was sought to be taken by the Commissioner of Income Tax as there was a mistake apparent from the record. In the rectification proceedings, the Commissioner of Income Tax by placing reliance on the decision of the Supreme Court in SAHNEY STEEL AND PRESS WORKS LTD AND OTHERS VS. COMMISSIONER OF INCOME TAX (228 ITR 253) held that the power tariff subsidy was given to the assessee company after it had commenced its production and hence the subsidy received by the appellant were to be treated as revenue receipt. The order of the Commissioner of Income Tax was challenged before this Court by way of writ petition on the ground that as there was no mistake apparent from the record, the order of the Commissioner of Income Tax passed under Section 264 cannot be rectified based on the subsequent decision of the Supreme court. By order dated 8.12.2000, the learned single Judge rejected the plea of the assessee on the ground that the rectification proceedings were initiated on the strength of the subsequent pronouncement of the Supreme Court SAHNEY STEEL AND PRESS WORKS LTD AND OTHERS VS. COMMISSIONER OF INCOME TAX (228 ITR 253) declaring the law on the points that had been dealt with by the Commissioner in his earlier order and consequently the learned single Judge held that the order of the Commissioner could not be said to be suffering from any illegality. The said order is now put in issue before this Court in the present writ appeals.

3. A perusal of the order of the learned single Judge shows that the order of the Commissioner of Income Tax, the first respondent herein was upheld by this Court on the ground that when the law declared by the Apex Court in the above said decision on the points that had been dealt with the Commissioner has been followed by the Commissioner, there is no need to interfere with the order of the Commissioner under Article 226 . We are in complete agreement with the view expressed by the learned single Judge. Learned counsel for the assessee however, submitted that the facts of the case dealt with by the Apex Court stand on a different footing which is based on the power subsidy scheme implemented by Andhra Pradesh Government. Hence, he prayed for reversing the order of the learned single Judge. We do not agree.

4. Having regard to the fact that the issue has to be decided on the facts of the case projected and in the light of the decision of the Apex Court in SAHNEY STEEL AND PRESS WORKS LTD AND OTHERS VS. COMMISSIONER OF INCOME TAX (228 ITR 253), it is but proper that the appellant approaches the Deputy Commissioner of Income Tax the second respondent herein to consider their claim in accordance with law. Hence, we do not find any justification to interfere with the order of the learned single Judge. Accordingly, we direct the appellant herein to make their representation before the assessing authority, the second respondent herein on or before 20.12.2007 with the objections and necessary materials to support their claim. After considering the same, the assessing authority shall pass order in terms of the law declared by the Apex Court in the decision cited above. It is made clear that if the appellant assessee fails to make their representation on 20.12.2007, it is open to the authorities concerned to pass orders finalising the assessment order in terms of the order passed by the Commissioner of Income Tax, the first respondent herein under Section 154 of the Income Tax Act.

5. With these observations, the writ appeals are disposed of. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

krr/

To

1. The Commissioner of Income Tax
Central Revenue Building
V.P.Rathnasamy Nadar Road
Madurai 625 002.

2. The Deputy Commissioner of Income Tax
Special Range II
Madurai.

+ one cc to Mr. N. Seinivasan, Advocate, SR.70643.

+ one cc to Pushya Sitaraman, Advocate, SR.70642.

CU(CO)
RP 26.12.2007.

W.A.Nos.2769 and 2770 of 2004