

K.R.RAMAMANI MEMORIAL NATIONAL TAXATION MOOT PROBLEM 2021-22

The Income Tax Department filed a SLP before the Hon'ble Supreme Court of India against the order of the Hon'ble Madras High Court passed in *PCIT vs M/s. Vulcan Energy Pvt. Ltd. in TCA 149 of 2021* for the AY 2010-11. Leave was granted by the Hon'ble SC and the case is posted for final hearing to deal only with the following legal question raised by the Revenue:

A. Whether the HC was justified in holding that the sale of carbon emission reduction (CER), also known as carbon credits, is to be considered as capital receipts and not liable to taxation, without appreciating that carbon credit is revenue in nature and taxable as can be seen from the intention of Legislature having been clarified by the introduction of section 115BBG of the Income Tax Act, 1961?

Attached: HC Order

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Tax Case Appeal No.149 of 2021

DATED : 16.2.2021 CORAM

Principal Commissioner of Income Tax, Chennai. ...Appellant vs.
M/s. Vulcan Energy Pvt. Ltd ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 12.10.2017 passed by the ITAT, Chennai 'D' Bench in I.T.A.No.1321/Mds/2017 for the AY 2010-11.

For Appellant : Mr.Aziz Alam,Standing, Counsel
For Respondent : Mr.Vikram Vijayaraghavan, Advocate

Judgment:

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) raising the following substantial question of law: *Whether, on the facts and circumstances of the case, the Tribunal is legally correct in holding that the sale of carbon emission reduction (CER) also known as carbon credits is to be considered as capital receipt and not liable to tax?*

Insofar as substantial question of law is concerned, the question as to the manner in which sale of carbon credit has to be treated, has already been considered by several High Courts and it has been held that such receipts should be treated as a capital receipt and not taxable. In this regard, it would be beneficial to refer to **CIT vs. Subhash Kabini Power Corporation Ltd., [(2016) 385 ITR 0592 (Karn.)]**. In the said decision, the Karnataka High Court approved the view taken by the ITAT, Hyderabad Bench, which decision was upheld by the High Court of Andhra Pradesh in the case of **CIT vs. My Home Power Ltd. [(2014) 365 ITR 0082 (AP)]**. The short point in the aforesaid decision is that carbon credit is not an offshoot of business but an offshoot of environmental concerns. It is to be noted that in the instant case also, the lower authorities of CIT(A) and ITAT held in favour of the assessee, who is in the business of power generation, based on the *My Home Power (supra)* decision.

Further, we point out that the Hon'ble Division Bench of this Court in **PCIT vs. Arun Textiles Pvt. Ltd., [T.C.A.No.606 of 2016, dated 29.8.2016]** as well as in **CIT Vs. Ambika Cotton Mills Ltd. [2021] 125 taxmann.com 206** which in turn followed the decision of this Court made in **S.P.Spining Mills Pvt. Ltd., Vs. ACIT [TCA.No.451 of 2018 dated 19.1.2021]**, decided this issue against the Revenue.

We finish by pointing out merely for completeness sake that the question whether S.115BBG (subsequently introduced via Finance Act 2017 w.e.f 1.4.2018 to tax sale of carbon credits at 10%) will apply for previous AY's is already dealt with in aforesaid judgments holding it as prospective and further we do not agree with the view canvassed by Department that the very fact that carbon credits are now taxed in S.115BBG somehow shows or *implies* that they have always been revenue in nature and not capital. We also take note of the additional argument by assessee counsel that even from second proviso to S.28(va) it is clear that the intention is always not to tax income which helps the environment but in our view that proviso is not applicable to carbon credits directly and the ratio is only one of persuasive value but anyhow we do not need to decide this aspect as it is academic given the above decisions.

We do not see merit in the Revenue's claim and dismiss the appeal. No order as to costs.

Sd/-
6.2.2021, Madras