(1998) 03 MAD CK 0127

In the Madras High Court

Case No : Tax Case No. 795 of 1986 24th March, 1998

AGRIMMOOR (P) LTD. APPELLANT

Vs

COMMISSIONER OF INCOME TAX RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Citation : (2001) 165 CTR 696

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Full Bench

Advocate : P.P.S. Janarthana Raja for and Subbaraya Aiyar and Padmanabhan, for the Assessee and C. V. Rajan, for the Revenue, for the Appellant;

Judgement

N. V. Balasubramanian, J.

The question of law referred at the instance of the assessee for the assessment years 1976-77 and 1977-78 reads as under :

"Whether the Tribunal was justified in confirming the disallowance of expenditure incurred on Agmark coupons, fumigation charges, carriage of ''export goods, marine insurance and certificate of origin under the provisions of section 35B of the Income Tax Act, 1961, for the assessment year 1978-79?"

2. A bare reading of the question would indicate that the claim of the assessee is u/s 35B of the Income Tax Act, 1961 for weighted deduction in respect of certain items of expenditure set out in the question. We are of the opinion that so far as Agmark expenses are concerned, it cannot be said that it was incurred exclusively for the purpose of submitting technical information to the foreign buyers for promoting export sales of the assessee.

3. The Andhra Pradesh High Court in Commissioner of Income Tax Vs. Navabharat Enterprises (P.) Ltd., , has taken a view that weighted deduction in respect of Agmark expenses is not allowable u/s 35B of the Income Tax Act. We are in respectful agreement with the view expressed by the Andhra Pradesh High

Court and hold that the expenses incurred by the assessee in respect of Agmark cannot be said to have been incurred either for promotion of export sales or for the purpose of furnishing technical information to foreign buyers and the case of the assessee does not fall u/s 35B(1)(b)(viii) of the Act and, therefore, the assessee is not entitled to weighted deduction in respect of the expenses incurred in Agmark.

4. So far as other items namely fumigation charges, carriage of export goods, marine insurance and certificate of origin, are concerned, we are of the opinion that the claim of the assessee would fall u/s 35B(1)(b)(iii) of the Act since they are the expenses incurred for the carriage of the goods in India and therefore, the assessee is not entitled to claim the weighted deduction u/s 35B of the Act. We are of the opinion that the Tribunal was correct in holding that the assessee is not entitled to weighted deduction for none of the expenditure covered in the question of law referred to us. Accordingly, the question of law referred to us is answered in the affirmative and against the assessee. But, however, in the circumstances of the case, there will be no order as to costs.

