IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

T.C.A. NOS. 311 TO 314 OF 2015
AND
M.P. NOS. 1 OF 2015

Commissioner of Income Tax
108, Mahatma Gandhi Road
Chennai. ... Appellant in all the appeals

- Vs -

Mr. K.Gopalakrishnan ... Respondent in TCA 311/2015

Mr. G.Visalan ... Respondent in TCA 312/2015

Mr. S.V.Subramanian ... Respondent in TCA 313/2015

Mr. K.Janardhan ... Respondent in TCA 314/2015

Appeals filed under Section 260-A of the Income Tax Act against the order dated 19.5.14 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, made in IT (SS) A Nos.21, 22, 23 & 24/Mds/2013.

As against the order passed by the Commission of Income Tax (Appeals)-I, Chennai - 34 in
ITA No.45/09-10 dated, 28.12.2010
ITA No.42/09-10 dated, 07.03.2011
ITA No.26/10-11 dated, 27.12.2010 respectively as against the order passed by the Assistant Commissioner of Income Tax Central Circle - I(1), Chennai dated 29.05.2009 in PAN/GIR No.AFNPG9151N for the Block Assessment Year 1991-92 to 2000-01 and 2001-02(part), PAN/GIR No.G-68, dated 29.05.2009 in Block Assessment Year 1991-92 to 2000-01 and 2001-02(part) and; PAN/GIR No.ABCPSO634D, dated 30.04.2009 for the Assessment Year 1991-92 to 2000-01 and 2001-02 respectively (TCA Nos.311 to 313 of 2015) and

The Commissioner of Income Tax, Central - I, Chennai - 34 dated 30.03.2012 in C.No.1523/6/C-1/2011-12 as against the order passed by the Assistant Commissioner of Income Tax, Central Circle - I(1), Chennai dated 29.05.2009 in PAN.GIR No.ABXPV0904C for the Block Assessment Year 1991-92 to 2000-01 and 2001-02(part) (TCA No.314 of 2015)

For Appellant : Mr. T.R.Senthil Kumar

For Respondents : Mr. S.Sridhar

COMMON JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Mr.S.Sridhar, learned counsel is directed to take notice for the respondent in the respective appeals.

2. Aggrieved by the orders passed by the Tribunal in allowing the appeals filed by the respective assessee, the Revenue/appellant is before this Court by filing the present appeals by raising the following questions of law:-

> "i) Whether on facts and in the circumstances, the Appellate Tribunal was justified in setting aside the order passed u/s 263 of the Act holding that the assessment order is not erroneous and prejudicial to the interest of the Revenue?
>
> ii) Whether on facts and in the circumstances of the case, the Appellate Tribunal was justified in allowing 505 of the expenditure, when the entire 'undisclosed income' is required to be brought to tax as per Section 158B (b) of the Income Tax Act?
>
> iii) Whether on facts and in the circumstances of the case, the Appellate Tribunal was right in following the Tribunal's judgment rendered in the case of Shri K.Venugopal, which is also subject matter of appeal pending before the High Court of Madras?"

3. The respective respondents/assessees are individuals engaged in the business of financing and commission agent with Sree Gokulam Chits & Finance Company Ltd. A search action u/s 132 of the Income Tax Act was conducted in the business/office/branch/residential premises of M/s.Sree Gokulam Chits and Finance Company on 28.11.2000. During the said search operations, several incriminating materials

were seized. The search further revealed that employees/agents of the company were in receipt of commission, which was not admitted in the respective returns of income. Accordingly, notice u/s 158-BD of the Act was issued to the respective assessees. While the respondents/assessees in TCA Nos.311, 313 and 314 of 2015 filed returns of income, the respondent/assessee in TCA No.312/2015 did not file return of income and, accordingly another notice under Section 142 (1) of the Act was issued for which the assessee sought for one month time. However, even thereafter the respondent/assessee failed to file the return of income. Accordingly, the assessing officer while determined the total income for the three assessees, who filed return of income, and accordingly demanded tax including surcharge and interest, in respect of the other assessee, who failed to file the return, the assessing officer passed an exparte order demanding tax including surcharge and interest.

4. Aggrieved by the said block assessment, the respective respondents/assessees preferred appeals before the CIT (Appeals), who partly allowed the appeals.

5. In the meanwhile, the block assessments were revised by issuing notices u/s 263 of the Act to the respective respondents/assessees to bring to tax the 50% expenditure on the commission amount received from the company. After considering the submissions, respective revision orders were passed directing the assessing officer to disallow the 50% expenditure on the commission receipts and also consider withdrawal of the basic exemption granted.

6. Aggrieved by the said orders, the respective respondents/assessees filed appeals before the Appellate Tribunal. The Tribunal, following its earlier order in the case of K.Venugopal - Vs - JCIT allowed the appeals holding that the earning of income is always at the cost of expenditure and that commission income cannot be earned without any efforts and allowing of certain amount by way of expenditure by the assessing officer is correct. Aggrieved by the said order, the appellant/Revenue is before this Court by filing the present appeals.

7. Learned counsel appearing for the respondents/assessees, raised a preliminary objection as to the maintainability of the case of the appellant by submitting that as per Instruction No.1979 dated 27.3.2000 read with Instruction No.2 of 2005 dated 24.10.2005, for preferring a tax case appeal, monetary limit is fixed and only if the tax effect exceeds Rs.4 Lakhs, appeal can be filed in respect of single cases and in respect of group cases, each case should

individually satisfy the monetary limits and, therefore, cumulative tax effect cannot be taken into consideration. It is the submission of the learned counsel for the assessees/respondents that the assessees do not fall within any of the exceptions provided in the instruction mandating the department to prefer an appeal. The learned counsel appearing for the assessees also pleaded that the case of the assessees do not fall within the exceptions specified in Instruction No.1979 issued by the Central Board of Direct Taxes on 27.3.2000, where irrespective of revenue effect the matter should be contested by the Department. In the above backdrop, learned counsel for the assessees submit that the present appeals are not maintainable.

8. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondents/assessees and perused the materials available on record.

9. Even at the outset, this Court is not inclined to entertain these appeals in view of the preliminary objection made by the learned counsel for the respondents that the monetary limit to prefer an appeal is pegged at Rs.4,00,000/- by the Central Board of Direct Taxes vide Instruction No.2 of 2005, dated 24.10.2005 read with Instruction No.5 of 2007, dated 16.7.2007.

10. In the case on hand, the demand of tax is on the commission amounts received, inclusive of surcharge and interest. The preliminary objection of the respective assessees, the income assessed and the tax liability are as under:

> Preliminary objection on maintainability of Department's Tax Case Appeal:
>
> Instruction No.1979 dated 27.03.2000 read with Instruction No.2 of 2005 dated 24.10.2005 fixed the monetary limit to prefer a Tax Case Appeal only if the tax effect exceeds Rs.4 Lakhs for each case taken singly, i.e., in group cases, each case should individually satisfy the monetary limits and therefore cumulative tax effect cannot be taken into consideration. The Assessee submits that the Assessee does not fall within any of the exceptions provided in the instruction mandating the department to prefer an appeal. The total tax effect including interest is as follows:

TCA No.	Assessed Income Rs.	Tax Effect Rs.
311/2015	1,42,130/-	85,278/-
312/2015	2,55,100/-	1,53,060/-
313/2015	1,00,360/-	60,216/-
314/2015	1,82,340/-	1,09,404/-

11. As regards the plea of the learned counsel appearing for the assessees that the case of the assessees do not fall within the exceptions specified in Instruction No.1979 issued by the Central Board of Direct Taxes on 27.3.2000, where irrespective of revenue effect the matter should be contested by the Department, the relevant portion of the said instruction reads as under:

> "3. Adverse judgments relating to the following should be contested irrespective of revenue effect:
>
> (i) Where Revenue audit objection in the case has been accepted by the Department.
>
> (ii) Where the Board's order, notification, instruction or circular is the subject-matter of an adverse order.
>
> (iii) Where prosecution proceedings are contemplated against the assessee.
>
> (iv) Where the constitutional validity of the provisions of the Act are under challenge."

12. The learned Standing Counsel for the Revenue is not disputing the fact that the tax effect in the present cases is less than Rs.4 Lakhs and that the case of the respective respondents/assessees do not fall within the exceptions specified in Instruction No.1979, dated 27.3.2000.

13. It is brought to the notice of this Court that in an earlier decision in Commissioner of Income Tax, Salem - Vs - Dr. C.T.Kiruba (T.C. (A) Nos.1011 & 1012 of 2007 - dated 19.1.2015), in similar set of facts, this Court has dismissed the appeal filed by the Department as not maintainable.

14. Considering the circulars issued by the Central Board of Direct Taxes and the tax effect involved in the cases on hand, this Court is not inclined to entertain these appeals. Accordingly, without going into the merits of the questions of law formulated and in the light of the earlier decision of this Court in Dr.C.T.Kiruba's

case (supra), these appeals are dismissed as not maintainable. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

GLN

To

1.Commissioner of Income Tax
Chennai.

2.The Income Tax Appellate Tribunal
'A' Bench, Chennai.

3.The Commissioner of Income Tax(Appeals)-I,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34

4.The Commissioner of Income Tax,(Central-I)
46, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

5.The Assistant Commissioner of
Income Tax,
Central Circle - I(1), Chennai.

+4cc's to Mr.S.Sridhar, Advocate, S.R.No.36881 to 36884
+2cc's to Mr.T.R.Senthil Kumar, Advocate, S.R.No.37111

T.C.A. NOS.311 TO 314 OF 2015

PVR(CO)
CA(20/08/2015)