

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH
T.C.(A).Nos.1011 and 1012 of 2007

Commissioner of Income Tax
Salem. .Appellant in both Appeals

Vs.

Dr.C.T.Kiruba ... Respondent in both Appeals

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 27.10.2006 made in I.T.(SS) A.Nos.87/Mds/2004 and 215/Mds/2003 for the block period 1.4.1989 to 27.10.1999.

against the order of the Commissioner of Income Tax (Appeal) No.3 Gandhi Road, Salem 636 007 dated 26.6.2003 and 23.3.2004 made in ITA.287/2001-2002 and ITA 287/2001-2002 (Corrigendum) which referred against the order of the Deputy Commissioner of Income Tax, Company Circle 1, Salem dated 30.10.2001 and made in PAN/GIR.No.K-779.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar

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J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

The Revenue has filed these appeals challenging the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 27.10.2006 made in I.T.(SS) A.Nos.87/Mds/2004 and 215/Mds/2003 for the block period 1.4.1989 to 27.10.1999, and the same were admitted on the following questions of law:

"(a) Whether the Tribunal is right in deleting the addition of Rs.2.0 Lakhs made on account of renovation of residential building, including wooden work, which was admitted by the assessee himself as the cost of investment?

(b) Whether the Tribunal is right in deleting the addition of Rs.5,09,700/- made in the construction of quarters for nurses which was based on the departmental valuation report and is valid in view of the provisions of Section 142-A of the Income Tax Act?

(c) Whether the Tribunal is right in deleting the interest charged under Section 158BFA(1) as the return for the block period had been filed belatedly, especially when the charging of interest is mandatory?

(d) Whether the Tribunal is right in law in not considering the sworn statement dated 27.10.1999 given by the assessee when the search under Section 132 of the Act had taken place?

2. Even though these appeals were admitted on the questions of law, referred supra, we are not inclined to entertain these appeals in view of the preliminary objection made by the learned counsel for the respondent 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.

3. In the case on hand, the tax liability pertains to the additions made by the Assessing Officer on account of cost of renovation and construction of nurses quarters. The preliminary objection of the assessee and the tax liability under the above heads is as under:

Preliminary objection on maintainability of Department's Tax Case Appeal:

Instruction No.2 of 2005 dated 24.10.2005 read with Instruction No.5 of 2007 dated 16.7.2007 fixed the monetary limit to prefer a Tax Case Appeal only if the tax effect exceeds Rs.4 Lakhs. 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 excluding interest is as follows:

Description	Amount in Rs.
Renovation - Difference between Rs.1,71,150/- and Rs.2 Lakhs	28,850
Cost of construction of Nurses quarters - Difference between Rs.2,50,000/- admitted by the assessee and Rs.5,09,700/- added by the Assessing Officer	2,59,700
Total Income	2,88,550
Income Tax @ 60%	1,73,130
Add: Surcharge @ 10%	17,313
Total Tax Effect	1,90,443

4. The learned counsel for the assessee also pleaded that the case of the assessee does 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."

5. The learned Standing Counsel for the Revenue is not disputing the fact that the tax effect in the present case is less than Rs.4 Lakhs and that the assessee's case does not fall within the exceptions specified in Instruction No.1979, dated 27.3.2000.

6. Considering the circulars issued by the Central Board of Direct Taxes and the tax effect involved in the case on hand, this

Court is not inclined to entertain these appeals. Accordingly, without going into the merits of the questions of law formulated, these appeals are dismissed as not maintainable. No costs.

Sd/-

Asst.Registrar (CS III)

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Sub Asst. Registrar

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "D", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals)
Salem.
4. The Deputy Commissioner of Income Tax
Company Circle I, Salem.

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