

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

AND

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

T.C.(A).No.1099 of 2007

Commissioner of Income Tax
Chennai.

.. Appellant

Vs.

Shri.T.L.Prasanth
40, North Usman Road
T.Nagar, Chennai – 600 017.

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 16.02.007 made in I.T.A.No.599/Mds/2004 for the assessment year 2000-2001.

For Appellant : Mr.M.Swaminathan
Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar

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

The Revenue has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 16.02.007 made in I.T.A.No.599/Mds/2004 for the assessment year 2000-2001 and the same was admitted on the following question of law:

“Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the compensation received for delay in commencement of project is a capital receipt?”

2. Even though this appeal was admitted on the question of law, referred supra, we are not inclined to entertain this appeal 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. The preliminary objection of the assessee and the tax liability is as under:

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

Instruction No.1979, dated 27.3.2000 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 excluding interest is as follows:

A.Y.	Disputed Issue	Amount in Rs.	Working		Tax Effect in Rs.
2000-2001	Compensation Capital Receipt	6,71,580	@30 %	2,01,474	
			SC @ 10%	20,147	2,21,621

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.”

R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.

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 question of law formulated, this appeal is dismissed as not maintainable. No costs.

Index :Yes/No
 Internet:Yes/No

(R.S.,J) (K.B.K.V.,J)
30.06.2015

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To

1. The Assistant Registrar, Income Tax Appellate Tribunal, Bench "C", Chennai.
2. The Secretary, Central Board of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals), Central I, Chennai.
4. The Deputy Commissioner of Income Tax, Media Circle I, Chennai - 34.

T.C.(A).No.1099 of 2007