

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.2.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).Nos.1482 to 1484 of 2007

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

Prasanthi Entertainers (P) Ltd.
No.40, North Usman Road
Chennai - 600 017. .. Respondent

PRAYER: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 12.1.2007 made in I.T.A.Nos.336 to 338/Mds/2006 for the assessment years 1998-1999 to 2000-2001.

against the order dated 14.10.2005 and made in ITA.Nos.187/2005-2006 186/2005-06 & 185/2005-06 respectively on the file of the Commissioner of Income Tax (A) V, Chennai-34 against the order dated 31.3.2005 passed by the Income Tax Officer, Company ward V (1) Chennai 34 for the assessment years 1998-99 , 1999-2000 and 2000-2001 respectively.

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 'B' Bench, Chennai, dated 12.1.2007 made in I.T.A.Nos.336 to 338/Mds/2006 for the assessment years 1998-

1999 to 2000-2001, and the same were admitted on the following question of law:

"Whether the Tribunal was right in holding that the compensation received for delay in completion of project is a capital receipt?"

2. Even though these appeals were admitted on the question 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. 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.
1998-1999	Compensation Capital Receipt	1,83,600	@35%	64,260
1999-2000		3,12,120	@ 35%	1,09,242
2000-2001		2,38,680	@35%	83,538
			SC @ 10%	8,354
				91,892

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 question of law formulated, these appeals are dismissed as not maintainable. No costs.

Sd/-

Asst.Registrar (Lok adalat)

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Sub Asst. Registrar

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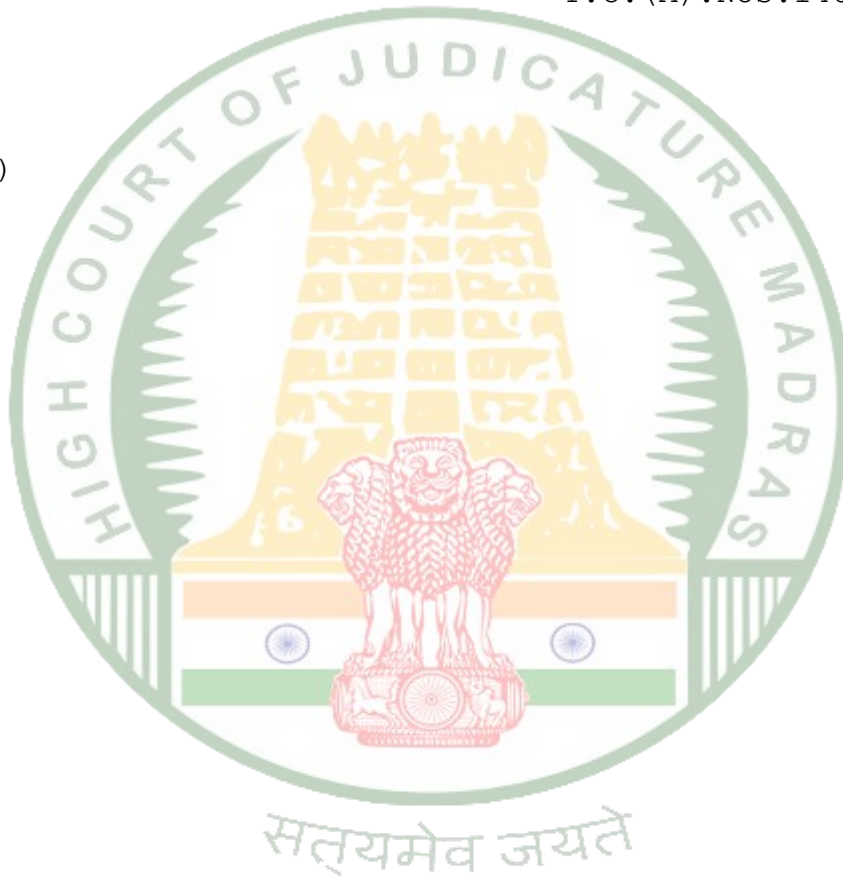
1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax (Appeals)-V
Chennai.
4. The Income Tax Officer
Company Ward V(1), Chennai.

5. The Commissioner of Income Tax,
Chennai

1 cc to Mr.Philip George, Advocate, sr. 9325
1 cc to mr.T.R.Senthil kumar, advocate, sR. 9137

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KSJ (CO)
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