IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/6/2016

C O R A M

The Honourable **Mr.Justice S.Manikumar**
and
The Honourable **Mr.Justice D.Krishnakumar**

Tax Case Appeal No.117 of 2016

The Commissioner of Income Tax
Chennai. ... Appellant

Vs

The Karur Vysya Bank Ltd
Erode Road
Karur 639 002. ... Respondent

Prayer: Appeal filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 30/1/2013 in I.T.A.No.900/mds/2010 for the assessment year 2002 – 2003.

For appellant : Mr.J.Narayanasamy
Senior Standing Counsel
for Income Tax

\- - - - - -

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

The instant Tax Case Appeal has been filed against the order dated 30/1/2013 in I.T.A.No.900/mds/2010 for the assessment year 2002 – 2003.

2. From the material on record, it could be deduced that earlier, the Commissioner of Income Tax, Trichy, has already filed a Tax Case Appeal No.804/2013 against the order dated 30/1/2013, made in ITA No.900/mds/2010, on the file of the Income Tax Appellate Tribunal, Madras (A) Bench for the assessment year 2002 – 2003 and after hearing the learned counsel for the parties, vide order, dated 9/6/2015, a Hon'ble Division Bench of this Court has dismissed T.C.A.No.804 of 2013 and at paragraph No.8, ordered as follows:-

> "In view of the above, we find no justification to accept the plea of the Department that the grounds raised were not considered by the Tribunal. The Department, if aggrieved should have filed an appeal on merits. The questions of law raised does not merit consideration in view of the clear finding of the Tribunal."

3. From the reading of the order made in Tax Case (Appeal)

No.804 of 2013, it could be deduced that the Hon'ble Division Bench has answered the questions of law raised against the Revenue, as the same do not merit any consideration, in view of the clear finding of the Tribunal. Though in the instant appeal, at paragraph No.4 of the Memorandum of Grounds, the revenue has contended that liberty was given to agitate the issue of unclaimed balance on merits and that the appellant has also raised the following substantial question of law as to "whether the Tribunal was right in holding that the amounts reflected as unclaimed balance in the books, which were available with the Bank over a period of time cannot be assessed to income tax?", we find from the material on record, the very same ground has been raised as substantial question of law in the earlier Tax Case (Appeal) No.804 of 2013 and answered in the negative.

4. Mr.J.Narayanasamy, learned Senior Standing Counsel for Revenue has also fairly admitted the fact that the substantial question of law now raised in the instant Tax Case Appeal No.117 of 2016, had

already been raised in Tax Case (Appeal) No.804 of 2013, which has been dismissed, on 9/6/2015.

5. The submission of the learned Senior Standing counsel is

placed on record.

6. In the light of the above submission and admitted position, we are of the view that a second Tax Case Appeal on the very same substantial questions of law is not maintainable. At this juncture, we are not inclined to advert to ground No.4 of the Memorandum of Appeal in the instant Tax Case (Appeal) No.117 of 2016.

7. Accordingly, this Tax Case (Appeal)No.117 of 2016 is dismissed. No costs.

(S.M.K.,J) (D.K.K.,J)
6th June 2016.

mvs.

Index: yes/No

website: Yes/No.

To

The Karur Vysya Bank Ltd
Erode Road
Karur 639 002.

S.MANIKUMAR,J

a n d

D.KRISHNAKUMAR,J

mvs.

C.M.A.No.117 of 2016

6/6/2016