IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2016

C O R A M

The Honourable Mr.Justice S.MANIKUMAR

and

The Honourable Mr.Justice D.KRISHNAKUMAR

Tax Case Appeal No.407 of 2016

The Commissioner of Income Tax,
Chennai ... Appellant/Respondent

Vs

M/s.Ambur Shoes,
No.10, Vepery High Road,
Periamet,
Chennai - 600 003 ... Respondent/Appellant
PAN:AABFA1495L

Prayer : Appeal filed against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai dated 02.06.2015 in ITA No.674/Mds/2015 (Assessment Year 2011-12). As against the order passed by the Commissioner of Income Tax (Appeals)-5 Chennai in Appeal NO.ITA.No.97/13-14 Dated of Order 10/03/2015 for the Assessment year 2011-2012 as against the order passed by the Assistant Commissioner of Income-Tax Circle X, Chennai-06 in PAN/No.AABFA1495L Dated 29/01/2014 for the Assessment years 2011-2012.

For appellant : Mr.T.Ravikumar
Sr. Standing Counsel for
Income Tax.

For respondent : Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar

J U D G M E N T

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

This Appeal has been filed against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 02.06.2015 in ITA No.674/Mds/2015 for the Assessment Year 2011-12.

2. The substantial questions of law raised in the instant appeal are:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing the deduction of expenses incurred by the assessee towards overseas selling commission when the assessee had failed to deduct tax at source u/s.195 on the same?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal is right in not considering the effect of Explanation to Sec.9 inserted by Finance Act, 2010 whereby income received by a non-resident for technical services is deemed to accrue in India irrespective of whether the non-resident has an establishment in the country and whether the non-resident had rendered the service outside India or India?
>
> 3. Is not the finding of the Tribunal that the expenses incurred by the assessee for a service rendered by a non-resident outside India and therefore not liable to deduction of Tax at Source contrary to the provisions of the Statute, i.e. Explanation to Sec.9 of the Income Tax Act, perverse and wrong?"

3. Mr.T.Ravikumar, learned Senior Standing Counsel for Income Tax submitted that the tax implication in the instant appeal is less than the ceiling limit fixed by the Circular bearing No.21 of 2015, dated 10.12.2015. He further submitted that as per the Circular, Tax Case Appeals have been instructed to be withdrawn, subject to the matters covered under the circular and there is no audit objection also.

4. Placing on record the above submissions, while dismissing the Tax Case Appeal No.407 of 2016, as withdrawn, substantial questions of law raised are left open. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commissioner of Income Tax
Chennai

2.The Income-Tax Appellate Tribunal
Madras 'B' Bench, Chennai

3.The Commisioner of Income tax
(Appeal)-5 Chennai-34

4.The Assistant Commissioner of Income Tax
Circle-X, Chennai-06

5.The Assistant Registrar
Income Tax Appellate Tribunal
Rajaji Bhavan, Besant Nagar Chennai

+1 cc to M/s.Subbaraya Aiyar Padmanabhan Advocate
sr 42845
+1 cc to M/s.J.Ravi kumar Senior Standing Counsel
for I.T.P. sr.42451

aa17/08/2016