THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

I.T.T.A.No. 328 of 2016

JUDGMENT: ***(Per VRS,J)***

The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961, raising the following substantial question of law:

> *"In the facts and circumstances of the case, whether the order of Hon'ble Tribunal (ITAT) in dismissing the appeal of the Revenue, merely on the ground of lower tax limit vide CBDT Circular No.21 of 2015, dated 10.12.2015, without considering the exception vide 8C of the said circular and without deciding the appeal on merit, is not perverse and liable to be set aside?"*

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel for Income Tax Department, appearing for the appellant.

3. The grievance of the Revenue is that though the tax implication of the appeal before the Income Tax Appellate Tribunal was below the monetary limit fixed by a Circular No.21/2015,

dated 10.12.2015, the case would fall under one of the four exceptions, namely, Paragraph-8.C of the said Circular. It is seen from a copy of the letter, dated 29.09.2010, issued by the Accountant General (C & RA), Andhra Pradesh, Hyderabad, that an audit objection was raised and the same was accepted by the Department by a communication, dated 04.01.2012. Therefore, the Tribunal was actually not correct in dismissing the appeal without referring to paragraph-8.C of the Circular.

4. But, even on merits, everything appears to have turned only on facts before the Commissioner of Income Tax (Appeals). It is seen from the order of the CIT (Appeals) that a sum of Rs.22,45,251/- was debited by the Assessing Officer, on the ground that the said amount was not declared in the VAT return. However, subsequently, the assessee produced C-Forms, to a large extent, leaving only a balance amount of Rs.88,881/-, that included purchase returns of Rs.80,862/-. As a consequence, the difference purchases/excess purchases made and reported in the VAT returns was only Rs.8,019/-.

5. But, as per the report of the Assessing Officer, there

was no excessive debit in the purchase account. In such circumstances, we
do not think that the audit objection should really be taken note of by the Department, to come up with an appeal where the facts stare at the face of the Department. Therefore, the Appeal is dismissed.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

10th August, 2016
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