IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER
AND
The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C. (A) Nos.1988 and 1989 of 2008

Commissioner of Income Tax-I,
Tiruchirapalli. .. Appellant in both TCAs.

-vs-

M/s.Gopaldas Dwarkdas Family
Trust Estate, 145, North Chithirai St.,
Srirangam, Tiruchirapalli 620 006. .. Respondents in both TCAs.

Appeals filed under Section 260A of the Income-tax Act, 1961, against the common order dated 28.02.2005 passed in W.T.A. Nos.42/Mds/2002 and 26/Mds/2003 on the file of Income Tax Appellate Tribunal Chennai 'C' Bench, for the Assessment Years 1998-99 and 1992-93 respectively.

For Appellant : Mr.J.Narayanaswamy

For Respondent : M/s.A.Sushma Harini

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COMMON JUDGMENT

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1.These are the captioned matters pertaining to Assessment Years (AYs) 1998-99 and 1992-93.

1.1.We are told that in so far as AY 1998-99 is concerned, the outstanding tax payable is a sum of Rs.24,868/- and in so far as AY 1992-93 is concerned, the tax payable is a sum of Rs.95,876/-. These appeals were admittedly instituted on 07.07.2005.

2.It is the common ground that at the relevant point in time, appeals could be preferred, only if, the tax effect exceeded the monetary limit of Rs.2,00,000/-. This aspect of the matter is provided for in Instruction No.1979, dated 27.03.2000, issued by the Central Board of Direct Taxes (in short 'CBDT'). To be noted, the said Instruction applied across the bar for all direct taxes which included wealth tax as well.

2.1.To be noted, the instant appeals pertain to wealth tax.

3.It appears that in so far as income tax is concerned, the CBDT issued another circular bearing No.21/2015, dated 10.12.2015, whereby, the monetary limits were enhanced. In so far as High Courts are concerned, the monetary limit stood enhanced to Rs.20,00,000/-.

3.1.In other words, the Department could prefer an appeal only if the tax effect exceeded the monetary limit of Rs.20,00,000/-.

3.2.We may note that in paragraph 8 of the said Circular, it has been indicated that the monetary limits specified in paragraph 3 of the said Circular shall not apply to writ matters and direct tax matters other than income-tax. The Circular, however, does not advert to Instruction No.1979, dated 27.03.2000.

4.In this background, it has been submitted by the learned counsel for the respondent / assessee that on the date, when, the appeals were filed, Instruction No.1979, dated 27.03.2000 was applicable and therefore, the captioned appeals could not have been instituted, having regard to the fact that the tax effect was lower than the monetary limit provided in the said Instruction.

4.1.This apart, learned counsel for the respondent / assessee says that the subsequent Circular, i.e. Circular No.21/2015 dated 10.12.2015, does not, in any manner, disturb the aforementioned Instruction No.1979, dated 27.03.2000, inasmuch as there is no supersession of the said Instruction. Learned counsel says that all that the Circular No.21/2015, dated 10.12.2015 states is that the enhanced monetary limits would not apply to writ matters and direct tax matters other than income tax.

5.Mr.Narayanaswamy, on the other hand, says that while he cannot but submit that Instruction No.1979, dated 27.03.2000 was applicable at the time when the appeals were filed, the instant matters may have to be re-examined in view of the order dated 26.04.2010, passed in T.C. (A) No.32 of 2005, which is the assessee's own case, albeit, relating to AY 1991-92.

6.Having heard learned counsels for the parties on the preliminary issue, according to us, the issue which arises for consideration is : as to whether or not the appeals, when instituted, were maintainable. Given the fact that Instruction No.1979, dated 27.03.2000 was in force on the date when the appeals were filed, the said appeals were clearly not maintainable and could not have been instituted.

7.It is settled law that the Instructions issued by CBDT are binding on the Department [see **Varghese (K.P.) vs. ITO, (1981) 131 ITR 597 (SC)**]. That apart, nothing has been shown to us, which would have us to come to the conclusion, that Instruction No.1979, dated 27.03.2000 has been withdrawn, in so far as wealth tax matters are concerned. In these circumstances, these appeals even, at this juncture, cannot be pressed by the Department.

8.In so far as the submission of Mr.Narayanaswamy is concerned that this Court should remand the matter to the Assessing Officer in view of the order dated 26.04.2010, passed by this Court in the assessee's own case for AY 1991-92, we are of the view that methodology cannot be employed qua the instant appeals. Reason for the same is that, firstly, the said order was passed at an ex parte stage and consequently, the respondent / assessee had no notice qua the same. Secondly, merely because the issue is common to several AYs., that cannot be the reason for permitting the Department to file an appeal even qua an Assessment Year where the tax effect is lower than the limits fixed by the CBDT, as the issue can easily be adjudicated upon in AYs where tax effect is more than the prescribed monetary limit.

8.1.Towards this end, for guidance the taxmann need not look further than to Circular No.21/15 dated 10.12.2015, which is otherwise not applicable to wealth tax cases. The clue with regard to the approach to be adopted in such like cases is contained in paragraph 5 of the said circular. Accordingly, the relevant para is extracted hereafter:

> *"5.The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee.* ***If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal, can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In other words, henceforth, appeals can be filed only with reference to the tax effect in the relevant assessment year.*** *However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year (s), if it is decided to file appeal in respect of the year (s) in which 'tax effect' exceeds the monetary limit prescribed. In case where a*

composite order / judgment involves more than one assessee, each assessee shall be dealt with separately."

(emphasis is ours)

9.Before we conclude, it would be relevant to advert to the fact that somewhat similar view has been taken by the Division Bench of Madhya Pradesh High Court in a judgment dated 11.01.2016, passed in WTA.No.1 of 2008, titled **Commissioner of Wealth Tax-I vs. Smt.Kavitha Sanghi,** on the issue as to whether an appeal could be maintained, if, on the date of its institution, the tax effect was less than the limit prescribed in the Circular operating at that point in time.

10.In view of the foregoing discussion, we are not inclined to entertain the appeals. The Tax Case Appeals are, accordingly, dismissed, leaving the parties to bear their own costs.

(R.S.A., J.) (R.S.K., J.)
27.03.2017

Index : Yes/No
Website : Yes/No

sra

Rajiv Shakdher, J.
and
R.Suresh Kumar, J.

(sra)

To

1.The Asst. Registrar,
Income Tax Appellate Tribunal,
Chennai 'C' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-I,
Tiruchirapalli.

3.The Asst. Commissioner of Income-tax,
Company Circle II, Trichy.

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