THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.T.T.A.No.661 of 2017

Date: 29.11.2017

Between:

Principal Commissioner of Income Tax-1,
Visakhapatnam … Appellant

And

M/s.Vijaya Engineers and Contractors
D.No.50-116-8/1 MIG 129,
North Extension, Seethammadhara,
Visakhapatnam … Respondent

Counsel for the Appellant : Mr. K.Raji Reddy,
Senior Standing Counsel
for Income Tax Department

Counsel for the Respondents : ----------

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The revenue filed this appeal against the order dated 28.12.2016 in I.T.A.No.79/Vizag/2016 on the file of the Income Tax Appellate Tribunal (in short 'the Tribunal'), Visakhapatnam 'SMC' Bench, Visakhapatnam. By the aforementioned order, the Tribunal has dismissed the appeal filed by the revenue, as the value of the appeal is below the monetary limits stipulated in Circular Memo.No.21/2015 dated 10.12.2015, issued by the Central Board of Direct Taxes.

2. At the hearing, Mr.K.Raji Reddy, learned Senior Standing Counsel for Income Tax Department, while fairly conceding that the case on hand does not fall within the exceptions of para 8 (a) to (d) of the Circular, further submitted that as the correctness of the judgment in **M/s.Merilyn Shipping and Transporters Vs. ACIT**[1], which is arising in many number of cases, day in and day out, arises in this case also, this case may be treated as an exception to the said Circular. In our opinion, merely because an issue common to several other cases arises in the instant case which was dismissed by the Tribunal following Circular No.21/2015, such dismissal would not cause any prejudice to the revenue because, the same cannot be construed as the Court affirming the view taken by the Tribunal. If cases of similar nature where the Circular is not attracted are pending, the revenue is always free to pursue those cases on merits. Therefore,

---

[1] 136 ITD 23

we are not inclined to interfere with the order of the Tribunal, dismissing the revenue's appeal. However, we make it clear that dismissal of this appeal shall not be understood as this Court, accepting the correctness of the view taken in **Merilyn Shipping** (1 supra) and that the revenue shall be free to pursue other cases if any, on their own merits, where such cases are not attracted by Circular No.21/2015.

3. With the above observations, the appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 29th November, 2017

msb