HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE T.AMARNATH GOUD

ITTA.No.757 of 2017

Date:05.12.2017

Between:

Principal Commissioner of Income
Tax-I, Visakhapatnam.

.....Appellant

And:

K.V.A.M.N.Patnaik,
Maharanipeta, Visakhapatnam.

.....Respondent

Counsel for the appellant: Mr. K.Raji Reddy

Senior Standing Counsel for Income Tax Department

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

This appeal by the Revenue is filed against order, dated 02.03.2017, in ITA.No.60/Vizag/2016 on the file of the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam (for short 'the Tribunal').

A perusal of the order under appeal shows that the Tribunal has dismissed the Revenue's appeal as the tax effect involved in the appeal was below the monetary limit specified in Circular No.21 of 2015, dated 10.12.2015, issued by the Central Board of Direct Taxes (for short 'the CBDT'). The Tribunal also observed in its order that the departmental representative has not raised any objection to the plea of the authorised representative of the assessee to dismiss the appeal on the afore-mentioned ground.

At the hearing, Mr. K.Raji Reddy, learned Senior Standing Counsel for Income Tax Department, submitted that the said Circular of the CBDT contains exceptions-(a) to (d) at paragraph-8 and that the present case falls under exception-(b). He has further submitted that though the Commissioner of Income Tax (Appeals) has not declared the CBDT's order or notification or instructions or Circular as illegal or ultra vires, he has nevertheless granted relief to the assessee contrary to the aforementioned Circular of the CBDT.

Exception-(b) of paragraph-8 of the said Circular of the CBDT reads as under:

> "Where Board's order, notification, instruction or circular has been held to be illegal or ultra vires."

In our opinion, if any order is passed contrary to a Circular, the same does not amount to holding such Circular as illegal or ultra vires. Therefore, the present case does not fall under any of the exceptions much less under exception-(b) of paragraph-8 of the said Circular of the CBDT.

For the afore-mentioned reasons, the appeal is dismissed as being contrary to Circular No.21 of 2015, dated 10.12.2015, of the CBDT.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

05th December 2017
DR