IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2018

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HON'BLE MRS. JUSTICE BHAVANI SUBBAROYAN

T.C.(A).No.1078 of 2008

Commissioner of Income Tax,
Chennai. .. Appellant

Vs

Smt.V.L.Indira Dutt,
2, Dr.PV Cherian Cresent,
Egmore, Chennai – 8. .. Respondent

Prayer : Tax Case (Appeal) is filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 14.12.2007, passed in ITA No.2836/MDS/2004, Assessment year 1997-98.

For Appellant : Mr.Karthik Ranganathan

For Respondent : Mr.R.Venkata Narayanan

JUDGMENT

(Judgment of the Court was delivered by
T.S.SIVAGNANAM, J.)

Heard the learned counsel for the appellant.

2. The Revenue preferred this appeal challenging the order passed by the Income Tax Appellate Tribunal in ITA No.2836/Mds/2004, dated

14.12.2007, for the assessment year 1997-98.

3. The above appeal has been admitted on 05.08.2008 on the following substantial questions of law :

> *"i. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the commission granted to the assessee vide the Annual General Body meeting resolution dated 26.07.1996 and credited by her to books of account during the financial year was not assessable in this assessment year?*
>
> *ii. Whether on the facts and circumstances of the case, the Tribunal was right in applying the section 47(vi)(d) retrospectively on the ground that insertion of the section is clarificatory in nature and thereby holding that no capital gains would arise by scheme of demerger where the shares were issued to the resulting company as a consideration for the transfer?"*

4. It may not be necessary for us to answer the above substantial questions of law, as the monetary limit in this appeal is lesser than the amount fixed by the circular instructions issued by the Central Board of Direct Taxes. This Court had an occasion to consider the effect of those circulars in TCA.No.395 of 2018 dated 24.7.2018, the relevant portions of which are as

follows :

"4. Further, it is relevant to note that by Circular No.3/2018, dated 11.7.2018, monetary limit has further been increased and appeals be maintainable before the High Courts. It has been increased to Rs.50,00,000/-. Hence, viewed from any angle, this appeal could not have been filed.

5. Thus, by applying the above Circular issued by the CBDT, this appeal ought not to have been filed by the Revenue and hence, for that reason, this tax case appeal is dismissed and the substantial questions of law, framed for consideration, are left open."

5. In the light of the above, the above appeal is dismissed. No costs. The substantial questions of law are left open for consideration.

(T.S.S.,J) (V.B.S.,J)

30.10.2018

rkm
Index:yes/no

T.S.SIVAGNANAM, J.
AND
V.BHAVANI SUBBAROYAN, J.

rkm

To

Commissioner of Income Tax,
Chennai

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