IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

Tax Case Appeal No. 2056 of 2008

The Commissioner of Income Tax
Tamil Nadu–VII, Madras.

.... Appellant

-vs-

Smt. Chandra Ramesh,
2, Vijayaraghava Road, T.Nagar,
Chennnai-600 017.

...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'A' Bench, dated 07.05.2008 in ITA No.708/Mds/2005, for the Assessment year 2001-02.

For Appellant : Mr.T.Ravi Kumar

For Respondent : Mr.Vijaya Raghavan for
M/s.Subbarayar Aiyar Padmanabhan

JUDGMENT

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[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal, under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act'), has been filed by the Revenue, challenging the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 07.05.2008 in ITA No.708/Mds/2005, for the Assessment year 2001-02.

*2.*Heard Mr.T.Ravi Kumar, the learned Counsel for the appellant/Revenue and Mr.Vijaya Raghavan for M/s.Subbarayar Aiyar Padmanabhan, the learned Counsel for the Respondent/assessee.

3.This Appeal has been admitted on 22.12.2008, on the following Substantial Questions of Law:

> *"(i)Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that deduction u/s 57(iii) of the Act should be allowed on the interest paid on funds borrowed is valid?*
>
> *(ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the deduction u/s 57(iii) of the Act should be*

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allowed, even though the assessment year under consideration, the dividend income was exempt u/s 10(33) of the Income Tax Act, 1961, in which case the assessee is not entitled to claim any deduction in respect of an income not forming part of the total income?"

4.The learned counsel appearing for the respondent/assessee submitted that the appeal filed by the Revenue cannot be pursued further in the light of the low tax effect in the instant case and the stipulation in Circular No. 3 of 2018, dated 11.07.2018, is fully applicable to the case on hand and prays that the appeal be dismissed on the ground of low tax effect.

5.Mr.T.Ravi Kumar, appearing for the appellant/Revenue contended that he does not have any specific written instructions from the Department as to the tax effect in the instant case. Therefore, it is his submission that the Court may peruse the relevant documents to ascertain tax effect in this appeal. The counsels on either side assisted the Court in arriving at such decision.

6.On a perusal of the Assessment Order dated 31.03.2004, it

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is seen that the interest disallowance was Rs.30,49,982/-, which was added to the total income of the assessee.

7.The Revenue is on appeal before us with regard to interest disallowance contending that the Tribunal erred in holding that deduction under Section 57(iii) of the Act should be allowed on the interest paid on funds borrowed. The Tribunal relied on the decision in the case of ***CIT Vs. M.Ethurajan [273 ITR 95],*** wherein the assessee borrowed money for acquisition of shares to earn dividend thereon. But the assessee did not receive any dividend and the assessee claimed deduction of interest on barrowals. This claim was rejected by the Assessing Officer, but accepted by the Tribunal. On appeal before this Court, it was held that the Tribunal was right in holding that deduction under Section 57(iii) of the Act should be allowed on interest paid on funds borrowed. This Court, in the case of M.***Ethurajan,*** referred to the decision of the Hon'ble Supreme Court in the case of ***CIT Vs. Rajendra Prasad Moody, [reported in (115) ITR 519].***

8.Thus, the issue raised before us by way of Substantial

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Questions is only with regard to the interest disallowance which was added to the total income of the assessee. We find that the said amount is less than the threshold limit fixed in the Circular No. 3 of 2018, dated 11.07.2018, issued by the Central Board of Direct Taxes, which is Rs.50,00,000/-.

9.Thus, for the above reasons, the appeal filed by the Revenue is dismissed on account of low tax effect. The Substantial Questions of Law are left open and liberty is granted to the Revenue to seek for restoration of appeal in the event it is established that the tax effect is not as stated above or the case falls under any of the exceptional circumstances mentioned in the Circular. No costs.

[T.S.S., J.] & [N.S.K., J.]

msk/mrm **20.11.2018**

To

1.The Income Tax Appellate Tribunal Madras 'A' Bench.

HIGH COURT OF JUDICATURE MADRAS
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T.S.Sivagnanam, J.
and
N.Sathish Kumar, J.

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