IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.1394 of 2009

Commissioner of Income Tax I,
Trichirapalli. Appellant/Appellant

Vs.

Shri K.Thanabalan Respondent/Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 31.12.2008, made in IT (SS)A No.68/Mds/2002. Preferred against the order of the Commissioner of Income Tax, (Appeal) Central -I, Chennai-34 dated 25/01/2002 made in I.T.Appal No.229/2001-02 filed against the Assessment order of the Deputy Commissioner of Income Tax, Central Circle I(3) Chennai dated 31.07.2000 for the Assessment year 1989-90 to 1998 - 99 7 1999-2000 (Part)

For Appellant : Mrs.S.Premalatha
for Mr.M.Swaminathan,
Senior Standing Counsel.

For respondent : Mr.V.S.Jayakumar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J.)

This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 31.12.2008, in IT(SS)A.No.68/Mds/2002, by raising the following substantial questions of law :

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that unexplained investments of the assessee, who was the partner of the firms, in the

form of credits in the capital and current accounts could not be assessed in the Block Assessment on the ground that the credits appeared in the regular books of accounts for which returns had been filed by the firms ?

(ii) Without prejudice to the preceding question, whether the Appellate Tribunal was right in not adjudicating upon the correctness of the order of the Commissioner of Income Tax (Appeals) in holding that only the peak credit could be assessed in the hands of the assessee partner even though there was no nexus between credits brought in the books of the firm and the earlier cash withdrawals made by the assessee ? "

2. When the matter is taken up for hearing, the learned Standing Counsel for the Department brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018, dated 11.7.2018, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50.00 lakhs.

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and, therefore, the appeal filed by the Revenue is dismissed, as not pressed, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dixit

To

1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Madras 'D'Bench, Chennai.

2. The Commissioner of Incoem Tax,
(Appeals) Central - I, Chennai-34.

3. The Deputy Commissioner of Income Tax,
   Central Circle I(3) Chnnai.

4. The Commissioner of Income Tax, Trichirappalli.

+1cc to Mr.S.Premalatha, Advocate SR.No.84935

+1cc to M/s.V.S.Jayakumar, Advocate SR.No.85642

TCA No.1394 OF 2009

RSI(CO)

GMY(04/01/2019)