

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.21 of 2009

Commissioner of Income Tax,
Central II, Chennai-34. ... Appellant /Appellant

-vs-

M/s.Manmandir Sarees (P) Ltd.,
Kakani Towers,
15, Khadar Nawaz Khan Road,
Chennai-600 006. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 11.07.2008 in I.T.A.No.2360/Mds/2007, for the assessment year 2005-06, and this appeal preferred against the order dated 28.08.2007 made in Appeal No.CIT(A)/CHE/337/06-07 on the file of the Commissioner of Income Tax (Appeals)II, Chennai, No.46, Mahatma Gandhi Salai, Nungambakkam, Chennai-34 and this appeal preferred against the order dated 27.12.2006 made in PANO.AAACM4622R for the Assessment year 2005-2006 on the file of the Assistant Commissioner of Income Tax Central Circle II 5(i/c), Chennai.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: and Ms.K.G.Usha Rani,
Junior Standing Counsel

For Respondent : Mr.M.P.Senthil Kumar

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue, is directed against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 11.07.2008, in I.T.A.No.2360/Mds/2007, for the assessment year 2005-06.

2. Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Ms.K.G.Usha Rani, learned Junior Standing Counsel for the Revenue; and Mr.M.P.Senthil Kumar, learned counsel for the assessee.

3. This Appeal has been admitted on 30.03.2009, on the following substantial question of law:-

"Whether on the facts and circumstances of the case, the Appellate Tribunal was right in upholding the findings of the Commissioner of Income Tax (Appeals) that the value of stocks as at the time of search at cost price should be arrived at by deducting the marked up selling price the gross profit of 16.66% as against 11.5% adopted by the Assessing Officer?"

4. The learned counsel for the respondent has produced a memo to demonstrate as to why the appeals are hit by the Circular No.3 of 2018 dated 11.07.2018. For better appreciation, the memo is quoted hereinbelow:-

"1. A sum of Rs.94,99,079/- was added as undisclosed income (Stock) by the Assessing Officer (Page 12 of Typed set). On appeal, the CIT (Appeals) reduced the addition to Rs.13,42,834/- (Page 17 of Typedset). The relief granted by the CIT (Appeals) is Rs.81,56,243/-.

2. The relief granted by the CIT (Appeals) was restricted to Rs.74,93,453/- by the Tribunal (Page 20 of Typed set); which is contested by the department in this appeal.

3. The tax effect thereon Rs.74,93,453/- @ of 35% including surcharge and cess is only Rs.27,42,041/-.

4. In view of Circular No.3/2018 issued by the CBDT, the Appeal by the Department is liable to be dismissed in limine."

5. The Revenue does not dispute the above factual position.

6. We have perused the order of assessment as well as the order passed by the Commissioner of Income Tax and we find that the tax effect in this appeal is lesser than the threshold limit mentioned in Circular No.3 of 2018, dated 11.07.2018, issued by the Central Board of Direct Taxes, which fixes the monetary limit as Rs.50,00,000/- for the Department to pursue the matter. Furthermore, the Revenue has not been able to point out any distinguishing features, by which the Circular No.3 of 2018, dated 11.07.2018, cannot be applied.

7. Thus, for the above reasons, the Revenue cannot pursue this appeal in view of the low tax effect. Hence, this Tax Case Appeal is dismissed and the substantial question of law, framed for consideration, is left open. No costs. The Revenue is at liberty to seek for restoration of appeal if at a later point of time, it is found that the tax effect is above the threshold limit or to fall under the exceptional clauses mentioned in the Circular.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Income Tax Appellate Tribunal Chennai "C" Bench.

2.The Commissioner of Income Tax (Appeals)II,
Chennai, No.46, Mahatma Gandhi Salai,
Nungambakkam, Chennai-34.

3.The Assistant Commissioner of Income Tax,
Central Circle II 5(i/c), Chennai.

+1cc to M/S.T.R.Senthilkumar, Advocate Sr.78121
+1cc to M/S.G.Baskar, Advocate Sr.77801

T.C. (A) No.21 of 2009

kj[co]
srg 28/12/2018