IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM

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

Tax Case Appeal No.836 of 2009

The Commissioner of Income Tax
Chennai. Appellant / Respondent

Vs.

Late A.Y.Prabakar
(Through Legal Heir) Respondent / Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 10.3.2006 made in ITA No.2459/Mds/2005 for the Assessment year 1998-99 preferred against the order of the Commissioner of Income Tax (Appeals)-III, Chennai, dated 28.09.2005 made in ITA No.44/2004-05 against the order of the Assistant Commissioner of Income Tax, Business Circle-IV, Chennai-34, dated 28.03.2005 made in PAN/GIR No.AAAPP7642M for the Assessment year 1998-99.

For Appellant : Mr.T.R.Senthilkumar,
Senior Standing Counsel

For respondent : Mr.R.Sivaraman

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 'A' Bench, Chennai, dated 10.3.2006 made in ITA No.2459/Mds/2005, by raising the following substantial questions of law:

> "i) Whether a legal representative being aware of the proceedings and participated in the same can challenge the assessment order on the ground that the other legal heir is not served with a notice?
> ii) Whether a person who has participated in the proceedings can be termed as an aggrieved person to maintain the appeal on the ground that notice to the

other legal heirs has been served. When the assessment proceedings were completed, after participation by the legal representative of the deceased and the assessment order is passed only where the name of the deceased found place there need not be only a clerical mistake and hence followed section 292B in future. Can assessment proceedings be set at naught merely because of a clerical mistake and whether would it not be same by virtue of section 292B even assuming that there is a difficulty in passing the assessment order on the name of the deceased person whether it is an irregularity or the assessment proceedings are only void?"

2. When the matter is taken up for admission, the learned Standing Counsel 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 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 an appropriate case.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

ssk

Sub Assistant Registrar

To

1) The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.

2) The Commissioner of Income Tax, Chennai.

3) The Commissioner of Income Tax (Appeals)-III, Chennai,

4) The Assistant Commissioner of Income Tax,
Business Circle-IV, Chennai-34.

NMI(CO)
SSM(01/02/2019)

TCA No.836 of 2009