IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.134 of 2011

The Commissioner of Income Tax-II,
Coimbatore.

...Appellant

-vs-

M/s.Pricol Limited,
No.1087-A, Avanashi Road,
Coimbatore - 641 037.

...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 08.10.2010 in ITA No.1088/Mds/2010, for the Assessment year 2002-03 against the order of the Commissioner of Income Tax (appeals)I, Coimbatore in Appeal No. 283/09-10 dated 21.04.2010.

Against the order of the Assistant Commissioner of Income Tax Company Circle IV(!) Coimbatore in PAN. No. AABCP2380C dated 31.10.2009.

For Appellant : Mr.T.R.Senthil Kumar
For Respondent : No appearance

JUDGMENT

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

This Tax Case Appeal by the Revenue is filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench, dated 08.10.2010 in ITA No.1088/Mds/2010, for the Assessment year 2002-03.

2.Heard Mr.T.R.Senthil Kumar, learned Counsel for the appellant/Revenue.

3.This Appeal has been admitted on 05.04.2011, on the following Substantial Questions of Law:

"(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that an amount of Rs.20,40,000/- being the provision for service weightage of the employees to be paid at the time of retirement is an allowable deduction?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not considering that the amount paid to service weightage is neither a gratuity, nor a payment to any welfare fund and at the best only a provision in the nature of a Contingent Liability and therefore to be disallowed?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not considering Section 40A(9) while dealing with service weightage as it prohibits any payments towards setting up of any funds or trust etc., except for the purpose of recognized Provident Fund or Approved Gratuity Fund or Approved Superannuation Fund, or if required by any law?

(iv) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in not considering Section 40A(10) which is an exception to Section 40A(9) in allowing the service weightage especially when the service weightage does not fall within the exemption categories of Superannuation Fund, Gratuity Fund or Welfare Fund?"

4.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.

5.Thus, for the above reasons, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are 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.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

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

2. The Commissioner of Income Tax (appeals)I, Coimbatore.

3. The Assistant Commissioner of Income Tax
   Company Circle IV(1), Coimbatore.

+1 CC to Mr.T.R.Senthil Kumar, Advocate sr 81235.

T.C.A.No.134 of 2011

SVN(CO)
SP(31/12/2018)