IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

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

Tax Case (Appeal) No.4 of 2011

The Commissioner of Income Tax - I,
Chennai. ... Appellant

-vs-

Shri. Badrashyam H.Kothari ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 23.07.2010, passed in I.T.A.No.1871/Mds/2008 for the assessment year 2005-06. as against the Order of the Commissioner of Income Tax (Appeals)-III, Chennai dated 12/06/2008 made in Appeal No. (IT(A) - III/CHE/315/07-08 for the Assessment Year 2005-06 and against the Order of the Assistant Commissioner of Income Tax, Chennai in PAN/GIR.No. AGJPK 7393K order dated 19/11/2007 for the Assessment Year 2005-06.

For Appellant : Mr.Karthik Ranganathan
Standing Counsel

For Respondent : Mr.R.Venkatanarayanan
for M/s.Subaraya Aiyar Padmanabhan

JUDGMENT
(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal by the appellant/Revenue is directed against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai, dated 23.07.2010, passed in I.T.A.No.1871/Mds/2008 for the assessment year 2005-06.

2.Heard Mr.Karthik Ranganathan, learned Standing Counsel for the appellant/Revenue and Mr.R.Venkatanarayanan for

M/s.Subaraya Aiyar Padmanabhan, learned counsel for the respondent/assessee.

3.This Appeal has been admitted on 24.02.2011, on the following substantial questions of law:-

> "1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in only remitting the issue to the file of the Assessing Officer for re-adjudication after giving a finding that the assessee had not maintained Books of Accounts as per the provisions of Section 40AA(2) and the two Audit Reports u/s 44AB filed did not deal with the trading in shares and units, instead of setting aside the order of the Commissioner of Income Tax (appeals) and restoring the order of the Assessing Officer?
>
> 2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in first recording a conclusion that the claim of the assessee that he was doing the business in purchase and sale of shares and units of mutual fund stood substantiated and thereafter going to find that the assessee had not satisfied the statutory requirements for claiming the business loss in question instead of recording a conclusion that the assessee's claim could not be substantiated for reasons mentioned by the Tribunal?
>
> 3.Without prejudice to the preceding questions, whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not making it clear that the issue regarding the nature of the loss was left open to be decided in the course of re-adjudication, while remitting the matter to the file of the Assessing Officer?"

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 or to fall under the exceptional clauses mentioned in the Circular.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Income-tax Appellate Tribunal,
"A" Bench, Chennai.

2.The Commissioner of Income Tax,
Company Circle II, Chennai 34.

+1cc to Mr. Subbaraya Aiyar, Advocate, S.R.No. 80767

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SPD(CO)
GN(19/12/2018)