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.43 of 2011

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

-vs-

M/s.DSM Soft P. Ltd.,
No.1, 15th Cross St., Shastri Nagar,
Adyar, Chennai - 600 020. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "D" Bench, Chennai, dated 23.08.2010, passed in I.T.A.No.890/Mds/2010 for the assessment year 2007-08, Appeal filed against the order of the Commissioner of Income Tax (Appeals-III), 121 Mahatma Gandhi Road, Chennai-34 in ITA.NO.268/09-10 1A 111 dated 15/03/10 in GIR/PAN.NO. AAACD3149R for the Assessment year 2007-08 against the Assessment order dated 17/12/09 passed by the Assistant Commissioner of Incoem Tax, Company circle 1(4) Chennai in PAN/GIR.NO. AABCD0449E for the Assessment year 2007-08.

For Appellant : M/s.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

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, "D" Bench, Chennai, dated 23.08.2010, passed in I.T.A.No.890/Mds/2010 for the assessment year 2007-08.

2.Heard M/s.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

3.This Appeal has been admitted on 22.02.2011, on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the business losses of a unit which is not eligible for deduction u/s.10A of the Act could not to be set off against the profits of the undertaking eligible for deduction u/s.10A for the purpose of determining the allowable deduction u/s.10A of the Act?"

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 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

//True Copy//

Sub Assistant Registrar

To

1.The Income-tax Appellate Tribunal, “D” Bench, Chennai.

2.The Commissioner of Income Tax(Appeals-III)
No.121, Mahatma Gandhi Road, Chennai-34.

3.The Assistant Commissioner of Income Tax,
Company circle 1(4), Chennai.

+1cc to Mr.T.Ravikumar, Advocate sr.no.80607
+1cc to Mr.R.Sivaraman, Advocate sr.no.81550

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nr 21/12/2018