IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2018

CORAM :

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

Tax Case Appeal Nos.675 to 677 of 2011

The Commissioner of Income Tax,
Chennai. ...Appellant in all the appeals

-vs-

Shri G.Thiagarajan,
Prop.Shri Thiagarajan Enterprises,
555/1, 15th Avenue, Ashok Nagar,
Chennai - 600 083. ...Respondent in all the appeals

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 29.06.2007 passed in I.T.A Nos.291 to 293/Mds/2004, for the assessment years 1999-2000, 2000-01, 2001-02 respectively.

Against the Order of the Order of the Commissioner of Income Tax (Appeals) - VIII, Chennai dated 21/11/2003 passed in ITA.No. 12,13,14/2003-2004.

against the Order of the Assistant Commissioner of Income Tax, Circle V, (I/c) Chennai 34, dated 13/03/2003 for the Assessment Year 2001-2002 and

against the Order of the Assistant Commissioner of Income Tax Circle V, (i/c) Chennai 34 dated 13/03/2003 for the Assessment Year 2000-2001 and

against the Order of the Assistant Commissioner of Income Tax Circle V (i/c), Chennai, dated 13/03/2003 for the Assessment Year 1999-2000.

For Appellant : M/s.V.Pushpa
(in all the appeals)

For Respondent : Mr.G.Thiragarajan
(in all the appeals)

JUDGMENT

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

These Tax Case Appeals are filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 29.06.2007 passed in I.T.A Nos.291 to 293/Mds/2004, for the assessment years 1999-2000, 2000-01, 2001-02 respectively.

2.Heard M/s.V.Pushpa, learned Counsel for the Revenue and Mr.G.Thiagarajan, learned Counsel for the assessee.

3.These Appeals have been admitted on 27.03.2012, on the following Substantial Questions of Law:

> "(i)Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that deleting the addition made on account of cash credit on the ground that the decision of the Hon'ble Supreme Court in the case of Kale Khan Mohd Hanif Vs. Commissioner of Income Tax reported in 50 ITR Page 1 would apply only to credits introduced by way of a loan and not to credits introduced by way of creditors?
>
> (ii)Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that Section 68 of the Income Tax Act was not applicable in respect of trade creditors, addition to capital and fresh investments etc., even though the Assessing Officer had found that such trade creditors were bogus?
>
> (iii)Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in not considering the judgement of the Hon'ble Supreme Court in the case of the CBI Vs. Shukla reported in (1998) 3 SCC page 410 wherein it was held “if the word 'account' is to be given a wider meaning to include a record of financial transaction, reckoned a book containing statement of monetary transactions, would attract the definition of books of account under Section 34 of the Act?

(iv) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in not considering the fact that the book containing the statement of monetary transaction would attract the definition of books of account especially when the assessee had admitted that the profit and loss account and the balance sheet were prepared based on monetary transactions recorded in the computer system though incomplete?

(v) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in not considering a specific ground raised for adjudication namely ground No.4.1 which was not dealt with by the Tribunal and therefore non consideration of the same would give rise to a substantial question of law as held by the High Court of Madras in the case of M/s.South India Surgicals Company Pvt. Ltd., Vs. ACIT reported in 263 ITR page 5?”

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 these appeals are 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 these Appeals in view of the low tax effect. Hence, these Appeals are 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrm/abr

To

1.Income Tax Appellate Tribunal,
Madras 'A' Bench.

2.The Commissioner of Income Tax (Appeals),
Chennai.

3.The Assistant Commissioner of Income Tax,
Circle V, Chennai-34.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No. 83444

T.C.A.No.675 to 677 of 2011

NA(CO)
GN(03/01/2019)