In the High Court of Judicature at Madras

Dated : 20.9.2018

Coram :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.99 of 2015

The Commissioner of Income Tax, Chennai ...Appellant/Appellant

Vs

Shri.A.S.Rajkumar ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 24.2.2014 in ITA No.333/Mds/2013 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment year 2006-07 against the order passed by the Office of the Commissioner of Income Tax(Appeals VIII) Chennai 34 made in I.T.A. No. 171/11-12(A) VIII order dated 27.11.2012 and against the order passed by the Income Tax Department Chennai 34 made in PAN/GIR No. AGKPR62181) for the Assessment year 2006-2007.

For Appellant : Mr.T.R.Senthilkumar, SSC
For Respondent : Mr.K.Ravi

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned counsel on either side.

2. The Revenue has preferred this appeal challenging the order dated 24.2.2014 passed by the Income Tax Appellate Tribunal in ITA.No.333/Mds/ 2013 for the assessment year 2006-07.

3. The above appeal has been admitted on 16.11.2016 on the following substantials question of law :

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 40(a)(ia) are applicable only to the amount of expenditure, which are payable as of 31st March of the relevant previous year and it cannot be invoked to disallow expenditure, which had been actually paid

during the previous year, for which, no tax had been deducted at source ?

2. Is not the finding of the Tribunal bad, especially when the assessee has not deducted TDS in respect of commission payment, which would automatically warrant disallowance under Section 40(a)(ia) ?

3. Whether the term 'payable' would include the amount, which are paid during the previous year or only those that are outstanding as on 31st March ? and

4. Whether on the facts and circumstances of the case, the Tribunal was right in treating the amount payable as distinct from the amount paid for the purpose of provisions of Section 40(a)(ia)?"

4. The learned Senior Standing Counsel for the appellant seeks permission to withdraw the above appeal based on the Board's monetary policy circular. He would submit that on account of the monetary limit in this appeal, which is lesser than the threshold fixed by the Board's circular dated 11.7.2018, he may be permitted to withdraw the appeal.

5. The said submission of the learned Senior Standing Counsel for the Revenue is placed on record. The above tax case appeal is dismissed as withdrawn and the substantial questions of law framed in this appeal are left open. No costs.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Madras 'B' Bench.

2. The Income Tax officer
Business Ward IV(4) Chennai 34.

3. The Commissioner of Income Tax Appeals VIII, Chennai.

+1 CC to Mr.M. Swaminathan, Advocate sr 35372.
+1 CC to Mr.K. Ravi, Advocate sr 65358.

TCA.No.99 of 2015

SR(CO)
SP(12/10/2018)