IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.8.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Tax Case Appeal No.436 of 2018

Principal Commissioner of Income Tax 1
No.63, Race Course Road
Coimbatore. ... Appellant/Appellant

Vs.

M/s. Raja Steels Pvt. Ltd.
100, Avarampalayam Road
Ganapathy
Coimbatore 641 006. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 17.01.2018 in ITA No.1586/Mds/2017, against the order passed by the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 31/03/2017 made in P.A.No.G.I.R.No./TAN AAACR 9895D for the Assessment year 2012-2013 and against the order passed by the Deputy Commissioner of Income Tax, Corporate circle-I, Coimbatore dated 25/03/2015 made in A.No.AAA CR 9895D for the Assessment year 2012-2013.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras Madras 'C' Bench, Chennai, dated 17.01.2018 in ITA No.1586/Mds/2017, by raising the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case and in law, the Tribunal is correct in relying upon the judgement of the jurisdictional High Court in the case of CIT vs Lovely Exports (P) Ltd. when the cited case is clearly distinguishable from the instant case as the share application money received in the cited case was through banking channels while the payments in the instant case were made in cash with no supporting documents?

(ii) Whether on facts and circumstances of the case and in law, the order passed by the Hon'ble ITAT is justified when it failed to appreciate the decision of the Hon'ble Delhi High Court in the case of CIT vs Youth Construction (P) Ltd. [2014] 44 taxmann.com 364 (Delhi) wherein it was held that mere filing of copies of returns of income is not sufficient for purpose of discharging creditworthiness of share applicants and genuineness of transactions?

(iii) Whether the ITAT has failed to consider that the burden of proof lies on the assessee to prove the identity of the creditor, creditworthiness of the applicants and genuineness of the transaction to the satisfaction of the Assessing Officer?

(iv) Whether the ITAT has failed to consider the fact that the insertion of proviso to Section 68 of the Act is clarificatory in nature only when the words "any sum is found credited in the books" clearly cover the share application money within the purview of Sec.68 of the Act even prior to the amendment? And

(v) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is correct in ignoring the apparent fact that the assessee did not want to produce evidence in support of its claim, as it would have exposed that mens rea is apparent in this case?"

2. When the matter is taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.7.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is less than the monetary limit imposed and therefore, the appeal is dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Commissioner of Income Tax (Appeals)-1,
   Coimbatore.

2. The Deputy Commissioner of Income Tax
   Corporate Circle-1, Coimbatore.

3. The Income Tax Appellate Tribunal,
   'C' Bench, Chennai.

4. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   IIIrd Floor, Rajaji Bhavan,
   Besant Nagar, Chennai-90.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.55929

TCA No.436 of 2018.

sr[co]
srg 12/09/2018