IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM

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

Tax Case Appeal No.602 of 2018

Principal Commissioner of Income Tax
Central 2,
No.108, Mahatma Gandhi Road,
Chennai. ... Appellant /Appellant

Vs.

Shri P.Navaneethakrishnan HUF ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, SMC 'A' Bench, Chennai, dated 09.02.2018, made in M.P.No.320/Chny/2017 in ITA No.3148/Mds/2016. Against the Order of the Income Tax Appellate Tribunal SMC 'A' Bench, Chennai dated 24.07.2017, made in PAN.No. AAAHP3761R, against the Order of the commissioner of Income Tax (Apppeals) - 2 Madurai, dated 04.03.2016, made in ITA.No. 161/2014-15 against the Order of the Income Tax Officer Ward - II (2), Bibikulam, Madurai - 625 002, dated 21.03.2014, made in under section 143 (3) r/w section 147 of IT Act, for the Assessment Year 2008-09, and against the Order of the Income Tax Officer, Ward II (2), Madurai - 625 002 dated 31.12.2010, made in under section 143 (3) for the Assessment Year 2008-09.

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

JUDGMENT
(Judgment of the Court was 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, 'SMC' 'A' Bench, Chennai, dated 09.02.2018, made in M.P.No.320/Chny/2017 in I.T.A.No.3148/Mds/2016, by raising the following substantial questions of law:

"(i) Whether the ITAT is correct in law in holding that cess cannot be treated as tax and therefore deciding the appeal as not maintainable without appreciating the fact that the appeal before the ITAT is in accordance with the CBDT Board's Circular No.21/2015, dated 10.12.2015 ?

(ii) On the facts and in the circumstances of the case, whether the ITAT is correct in law in holding that the appeal is not maintainable without adjudicating the merits of the case though the appeal before the ITAT is in accordance with the CBDT's Circular No.21/2015, dated 10.12.2015 ? and

(iii) On the facts and in the circumstances of the case, whether the observations contained in the present order are not contradictory to the decision arrived at by the same bench in the order of the Hon'ble ITAT in ITA No.1201 & 1202/Mds/2017, dated 28.12.2017, delivered in the case of M/s.Chettinad Cement Corporation Ltd., Chennai ?"

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, this appeal is dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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TO

1. The Principal Commissioner of Income Tax,
   Central 2,
   No. 108, Mahatma Gandhi Road,
   Chennai.

2. The Income Tax Appellate Tribunal,
   SMC 'A' Bench, Chennai.

3. The Commissioner of Income Tax,
   (Appeals) - 2, Madurai.

4. The Income Tax Officer,
   Ward II (2), Bibikulam,
   Madurai 625 002.

TCA No.602 of 2018

BR(CO)
GN(04/12/2018)