IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM

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

Tax Case (Appeal) No.1016 of 2008

The Commissioner of Income-tax,
Salem. ... Appellant/Appellant

-vs-

Shri N.Thiyagarajan ... Respondent/Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal Madras "D" Bench, Chennai dated 23.11.2005 in ITA No.2548/Mds/2004 for the assessment year 1997-98, preferred against the order dated 07/07/2014 made in ITA.NO.21/02-03, by Commissioner of Income Tax(Appeals), Salem against the order of the Income Tax Officer, Ward I(3), Salem-7, dated 04.03.2002, made in PAN/GIR.NO.13PT0120.

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

For Respondent : Mr.A.S.Sriraman

JUDGMENT

[Delivered by T.S.Sivagnanam, J.]

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant and Mr.A.S.Sriraman, learned counsel for the respondent.

2.This appeal, by the Revenue, is directed against the order of the Income-tax Appellate Tribunal Madras "D" Bench, Chennai dated 23.11.2005 in ITA No.2548/Mds/2004 for the assessment year 1997-98.

3.This appeal has been admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that Sec.68 of the Income Tax Act could not be invoked for the assessment year 1997-98?"

4.It may not be necessary for this Court to take a decision on the substantial question of law framed in the light of the low tax effect in the present appeal. This issue was considered by this Court in the case of Commissioner of Income Tax vs. N.Meenakshisundaram [T.C.(A) Nos.868 & 869 of 2008; Dated 23.04.2018], by taking note of the Circular issued by the Central Board of Direct Taxes (CBDT) vide Circular No.21/2015; dated 10.12.2015, and also taking note of the submissions of the Revenue, the relevant portions of which are quoted hereunder:

> "10. An argument was advanced by the learned Senior Standing Counsel for the Revenue that the circular can have effect only, while filing the appeal and not while hearing of the appeal and would have no impact on the appeals, which are admitted and pending. However, in the Circular issued in the year, 2015, it has been made clear that, it will apply to pending appeals as well. In respect of the earlier circulars, it would be relevant to take note of the decision of the Hon'ble Supreme Court in Mathew M. Thomas Vs Commissioner Of Income-Tax [(1999) (III) ELT 4 SC] wherein, the Hon'ble Supreme Court, while considering the effect of Circular No.445, dated 16.05.1986, pointed out that Circular No. 455 dated 16.5.1986 issued by the C.B.D.T. is applicable to all pending proceedings which have not attained finality under Section 269 I of the Act as defined in the explanation to the said Section.
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> ....
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> 14. Therefore, the Circular has to be understood as part of the litigation policy of the Government of India to reduce the litigation and to bring down the number of Appeals, which are pending before the Court and also ensure that the Appeals are not preferred by the Department without proper examination of the case on merits. ....
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> 15. As per the Circular/Instruction issued by CBDT, the present Appeal should be not pressed by the Revenue. If, at the time of filing of the Appeal, decision has to be taken whether to file an Appeal or not and the Authority by due application

of mind and bearing the two caveats laid down by the Hon'ble Supreme Court, in Surya Herbal Ltd., case (supra) should take a decision. In cases, where, the Appeals are pending before the Court, appropriate Officer has to take a decision. In the instant case, it appears that, no such specific instruction is issued to Mr.M.Swaminathan, the learned Senior Standing Counsel to withdraw the Appeal, nor, can we compel the learned counsel to withdraw the Appeal.

16. Having held that the Circular issued by CBDT is applicable to the case on hand and the tax effect being less than the threshold limit prescribed in the Circular, we dismiss the present Appeal by applying the law laid down by the Hon'ble Supreme Court, in Surya Herbal Ltd., case (supra), as the two caveats mentioned thereunder does not arise in the instant case."

5.The learned Senior Standing Counsel for the Revenue submits that in the instant case also, the tax effect is lower than the limits prescribed in the Circular.

6.Thus, by adopting the monetary limits in the Circular, the tax case appeal filed by the Revenue is dismissed and the substantial question of law, framed for consideration, is left open. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income-tax (Appeals), Salem.
2.The Income-tax Appellate Tribunal Madras "D" Bench, Chennai.
3.The Income-tax Officer, Ward I(3), Salem-7.

+1cc to Mr.T.R.Senthil Kumar, Advocate sr.no.54598

T.C. (Appeal) No.1016 of 2008

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nr 10/09/2018