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) Nos.1289 to 1294 of 2008
and M.P.Nos.1, 1, 1, 1 and 1 of 2008

T.C. (A) No.1289 of 2008:-

The Commissioner of Income-tax,
Coimbatore. ... Appellant in all TC(A)

-vs-

M/s.S.V.Trust,
10, SMJ Lane, Pollachi. ...Respondent in all TC(A)

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal "A" Bench, Chennai dated 30.06.2004 in ITA Nos.2039 to 2044/Mds/2003 for the assessment years 1994-95, 1995-96, 1996-97, 1997-98, 1998-99, and 1999-2000 respectively as against the order dated 31.10.2003 made in I.T.Appeal(s) Nos.19, 22, 23, 24, 25 & 26-C/01-02 respectively passed by the Commissioner of Income Tax (Appeals)II, Coimbatore against the order dated 31.07.2001 passed by the Income Tax Officer, Ward I(1)i/c, Pollachi for the assessment year 1994-95, 1995-96, 1996-97, 1997-98, 1998-99 and 1999-2000 respectively in PAN/GI.No.T-657/1(1).

For Appellant : Mr.Karthick Ranganathan,
(in all Appeals) Senior Standing Counsel

For Respondent : Mr.R.Janaki Raman
(in all Appeals)

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

Heard Mr.Karthick Ranganathan, learned Standing Counsel for the appellant and Mr.R.Janaki Raman, learned counsel for the respondent.

2.These appeals, by the Revenue, are directed against the common order of the Income Tax Appellate Tribunal "A" Bench, Chennai dated 30.06.2004 in ITA Nos.2039 to 2044/Mds/2003 for the assessment years 1994-95 to 1999-2000.

3.The above appeals have been admitted on 01.09.2008 on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that, where the beneficiaries and their shares are determinate and therefore the trustees could not be assessed for tax and that the provisions of Section 164 of the Act are not attracted?
>
> (ii) Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal was justified in following the decision of Advance Ruling reported in 224 ITR 473 (AAR) does not have binding effect on the assessee's case?"

4.It may not be necessary for this Court to take a decision on the substantial questions of law framed in the light of the low tax effect in the present appeals. 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.

....

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. ....

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 appeals filed by the Revenue are dismissed and the substantial questions of law, framed for consideration, are left open. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

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

2.The Income-tax Appellate Tribunal "A" Bench, Chennai.

3.The Income-tax Officer, Ward I(1)/c, Pollachi.

4.The Director Central Board of Direct Taxes,
New Delhi

5.The Assistant Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Chennai-90

6.The Ciommissioner of Income Tax,
Coimbatore.

T.C. (A) Nos.1289 to 1294 of 2008

SAI(Co)
CS/05/09/18