IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

T.C.(Appeal) No.1528 of 2007

The Commissioner of Income-tax,
Tamil Nadu-III, Madras. ... Appellant

-vs-

M/s.Southern Groupd Industries P. Ltd.,
Raja Annamalai Buildings, 19, Marshall Road,
Chennai-600 008. ... Respondent

Tax Case (Appeal) filed under Section 260-A of Income Tax Act, 1961, against the order of the Income-tax Appellate Tribunal "C"Bench, Chennai, dated 06.07.2007 passed in I.T.A.No.1385/Mds/2001 and against order dated 27.09.2001 passed by the commissioner of Income Tax (Appeals) CV 34 ITA No.1/2001-02 and against the order dated 26.02.2001 passed by the Joint Commissioner of Income Tax Special Range VI chennai and made in assessment order for the assessment year 1998-1999.

For Appellant : Mr.T.R.Senthil Kumar
and Mr.S.Rajesh

For Respondent : Mr.M.P.Senthil Kumar

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J U D G M E N T

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

Heard M/s.T.R.Senthil Kumar and Mr.S.Rajesh, learned counsel for the appellant / Revenue and Mr.M.P.Senthil Kumar, learned counsel for the respondent / assessee.

2. This tax case (appeal) has been admitted on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal

was right in law in set aside the order of the Commissioner of Income-tax (Appeals) and directing the assessing officer to allow deduction under Section 80IA in respect of profits eligible unit and losses from trading activity should be ignored before allowing deduction under Section 80IA of the Act is valid in law?"

3. It may not be necessary for us to decide the substantial question of law framed for consideration, on account of the low tax effect in this appeal. This issue was considered by us in the case of Commissioner of Income Tax vs. N.Meenakshisundaram in T.C.(A) Nos.868 & 869 of 2008 dated 23.04.2018, by taking note of the Circular Instructions issued by the Central Board of Direct Taxes (CBDT) 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. ....

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."

4. By applying the above decision, we dismiss this tax case (appeal) on the ground of low tax effect and in terms of the above referred decision, leave the substantial question of law, which has been framed for consideration. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Income-tax,
Tamil Nadu-III, Madras.

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

3.The Commissioner of Income-tax (Appeals) V,
Officer of the Commissioner of
Income-tax (Appeals) V,
121, Mahatma Gandhi Road, Chennai-600 034.

4. The Joint Commissioner of Income Tax,
Spl. Range VI, Chennai.

+1cc to Mr.MALLIKA SRINIVASAN, Advocate, S.R.No.35146
+1cc to Mr.T.R.SENTHILKUMAR, Advocate, S.R.No. 35441

TR(22/06/2018)