IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM :

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

Tax Case (Appeal) Nos.1031 to 1036 of 2009

T.C.(A) No.1031 of 2009:-

The Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

M/s.Ramsahalmal Sanhuwala & Sons,
Charitable Trust No.24,
Cathedral Garden Road,
Nungambakkam, Chennai-600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 02/01/2008 in I.T.A.Nos 1751 to 1756/mds/2007 against the order of the Commissioner of Income tax appells-XI, Chennai-34 dated 28/02/2007 in ITA.NOS.508 to 513/06-07 against the order of the Income Tax Officer(OSD) Exemptions-IV(I/C), Chennai-34 dated 19/12/2006 in PAN/GIR.NO.4635-R respectively for the Assessment years 1999-2000 to 2004-2005(in TCA.Nos 1031 to 1036/2009)

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

For Respondent : Mr.G.Baskar
(in all Appeals)

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COMMON JUDGMENT

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

Heard Mr.Karthick Ranganathan, learned Senior Standing Counsel for the appellant and Mr.G.Baskar, learned counsel for the respondent.

2.These tax case appeals have been filed against the common order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 01.02.2008 in ITA Nos.1751 to 1756/Mds/2007 for the assessment years 1999-2000 to 2004-05.

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

> "Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the income earned from running of Kalyana Mandapam is not a business income and that assessee was eligible for exemption under section 11 of IT Act, 1961 for the assessment years 1999-2000 to 2004-2005?"

4.It may not be necessary for this Court to take a decision on the substantial question of law framed in the light of 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 circulars 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.

....

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 Circulars.

6.Thus, by adopting the monetary limits in the Circulars, 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 V)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Income Tax,
Chennai.

2.The Income Tax Appellate Tribunal 'B' Bench, Chennai.

3.The Commissioner of Income Tax (Appeals)-XI,
121, Mahatma Gandhi Road, Chennai-34.

+1cc to Mr.G.Baskar, Advocate sr.no.51550

T.C.(A) Nos.1031 to 1036 of 2009

spd(co)
nr 30/08/2018