IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM:

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

Tax Case Appeal No.15 of 2009

Commissioner of Income Tax,
Chennai III,
Chennai - 600 034. ... Appellant/Respondent

Vs

M/s.Supreme Renewable Energy Ltd.
(Now merged with Shree Ambika
Sugard Ltd.)
'Eldorado' 5th Floor,
112, Nungambakkam High Road,
Chennai - 600 034. ... Respondent/Appellant

Tax Case Appeal filed u/s.260-A of the Income Tax Act, 1961, against the order of Income Tax Appellate Tribunal Chennai 'C' Bench, dated 14.08.2008 in ITA No.11/Mds/2008 for the Assessment Year 2003-04 and against the order dated 31/10/07 of the Commissioner (A) for the Assessment Year 2003-04 and against the order dated 19/2/2004 the Income Tax Act by the Assessment Year 2003-2004.

For Appellant : Mr.M.Swaminathan

For Respondent : Mr.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
& Ramamani

JUDGMENT

[Judgment of the Court was made by T.S.SIVAGNANAM, J]

This appeal by the revenue is directed against the order of Income Tax Appellate Tribunal Madras 'C' Bench, in ITA No.11/Mds/2008 dated 14.08.2008 for the Assessment Year 2003-04.

2. The appeal was admitted on the following substantial question of law:

> '(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to refund of the tax deducted at source from interest on deposits with the IREDA, even though the income by way of such interest had not been shown in the return of income, ignoring the provisions of Section 199 as it stood for the relevant assessment year ? And
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> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the interest levied under Sections 234-B ad 234-C ?'

3. 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 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.
>
> ....

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. Learned Standing Counsel for the Revenue submits that in the instant case also, the tax effect is lower than the limits prescribed in the Circulars.

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 IV)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Income Tax Appellate Tribunal 'C' Bench,
Besant Nagar, Chennai.

2.The Income Tax Officer,
Company Ward VI (1), Chennai.

3.The Commissioner of Income Tax Appeal-XII,
Chennai-34.

4.The Additional /Joint Commissioner
of Income- Tax company Range VI,
Chennai.

+1CC to Mr.Swaminathan, Advocate Sr.50214
+1cc to M/S.Subbaraya Aiyar, Advocate Sr.50694

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srg 4/9/2018