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 No.627 of 2009

Commissioner of Income Tax
Madurai ... Appellant/Respondent

v.

Shri K.Sivakumar
C/o. CNGSN & Associates
20, Raja Street, T. Nagar
Chennai - 600 017
PAN : AJTPS 5869H ... Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 05.09.2008 in ITA No.2163/Mds/2007 for the assessment year 2003-04 against the order passed by the commissioner of Income Tax (Appeals) -II, Madurai made in PAN/GIR No.AJTPS5689H order dated 31/07/2007 for the Assessment year 2003-04 against the order passed by the Assistant Commissioner of Income Tax, Tirunelveli made in PAN/GIR No.AJTPS5869H order dated 08/06/2007 for the Assessment year 2003-04 against the order passed by the commissioner of Income Tax-II, Madurai made in C.No.114/7/(IT-II/2006-07 order dated 28/03/2007 for the Assessment year 2003-04 against the order passed by the Assistant Commissioner of Income Tax Circle-I, Tirunelveli made in PAN/GIR.No.AJTPS 5896H order dated 30/03/2006 for the Assessment year 2003-2004

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
For Respondent : No appearance

J U D G M E N T
[Delivered by T.S.Sivagnanam, J.]

Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue.

2. This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal in I.T.A. No.2163/Mds/2007 dated 05.09.2008. The appeal has been admitted on the following substantial question of law:-

> " (i) Whether in the facts and circumstances of the case, the Tribunal was right in dismissing the appeal filed against the giving effect order on the ground that the order of the CIT u/s 263 has been quashed even though the appeal against eh same has been admitted is pending before this court?
>
> (ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that expenditure on construction of building in a leasehold premises would amount to revenue expenditure, contrary to the clear provisions of Explanation 1 to section 32(1) of the Income Tax Act ?
>
> (iii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that even though the introduction of Explanation 1 to Section 32 was not brought to the notice of this court in the case of Hari Vignesh Motors, and the appeal was dismissed as covered by the Supreme Court judgement in the case of Madras Auto Service for a year subsequent to the amendment, it would form a binding precedent ?"

3. Before we proceed to consider the substantial questions of law raised in this appeal, we have to first take note of the fact that the tax effect in the present appeal relevant for the assessment year 2003-04 is less than the threshold limit. In the case of Commissioner of Income Tax, Salem v. N.Meenakshisundaram [Tax Case (Appeal) Nos.868 and 869 of 2008; Dated 23.04.2018], this Court had an occasion to consider various circulars issued by the Central Board of Direct Taxes (CBDT) as regards the threshold limits fixed for filing the appeals by the Revenue or pursue the appeals, which are pending from 2008 onwards.

4. Further, it is relevant to note that by Circular No.3/2018, dated 11.07.2018, monetary limit has further been increased and appeals be maintainable before the High Courts. It has been increased to Rs.50,00,000/-. Hence, viewed from any angle, this appeal could not have been filed.

5.Thus, by applying the above Circular issued by the CBDT, this appeal ought not to have been filed or pursued by the Revenue and hence, for that reason, this Tax Case Appeal is dismissed and the substantial questions of law, framed for consideration, are left open. No costs.

Sd/-
Assistant Registrar (CCC)

// True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal Madras 'B' Bench.

2.The Commissioner of Income Tax,
Madurai.

3. The Commissioner of Income Tax-II,
Madurai

4. The Assistant Commissioner of Income Tax,
Tirunelveli

+1cc to Mr.M.SWAMINATHAN, Advocate SR.No.51289

T.C.A.No.627 of 2009

SR(CO)
SMI/14.08.2018