

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM

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

Tax Case (Appeal) Nos.504 and 505 of 2008

Commissioner of Income Tax,
Chennai. Appellant in both Tax Cases

-vs-

M/s.Shri Vijaya Gimpex Mining (P) Ltd.,
"Impex House"
181, Linghi Chetty Street,
Chennai-600 001. Respondentin both Tax Cases

Tax Case (Appeals) filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal Chennai Bench-'C' dated 16.02.2007 in ITA Nos.1851/Mds/2006 and 1852/Mds/2006 for the assessment years 2001-02 and 2002-03 respectively, against the office of the Commissioner of Income Tax (A) XII, Chennai-34 in ITA.No.152 and 261/05-06 dated 31/03/2006 against the IncomeTax Department for the Assessment year 2001-2002 and 2002-2003 dated 30/01/2004 and 31/03/2005.

For Appellant : Mr.T.R.Senthil Kumar,
(in both Tax Cases) Senior Standing Counsel
: assisted by Mr.S.Rajesh,
Senior Standing Counsel &
: M/s.K.G.Usha Raman,
Junior Standing Counsel

For Respondent : Mr.G.Baskar
(in both Tax Cases)

COMMON JUDGMENT

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Mr.S.Rajesh, learned Senior Standing Counsel and M/s.K.G.Usha Rani, learned Junior Standing Counsel for the appellant and Mr.G.Baskar, learned counsel for the respondent.

2. These tax cases (appeals) have been filed challenging the common order of the Income Tax Appellate Tribunal Chennai Bench-'C' dated 16.02.2007 in ITA Nos.1851/Mds/2006 and 1852/Mds/2006 for the assessment years 2001-02 and 2002-03 respectively.

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

"Whether in the facts and circumstances of the case, the Tribunal was right in allowing the deduction u/s 80IB, when the assessee is not engaged in manufacturing activities?"

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

Sd/-

Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

To

1.Commissioner of Income Tax,
Chennai.

2.The Income Tax Appellate Tribunal Chennai Bench-'C'.

3.The Commissioner of Income Tax (Appeals) XII,
121, Mahatma Gandhi Road, Chennai-600 034.

+1 cc to Mr.N.Muthurkumar, Advocate SR.No.49115

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RK(CO)
SMI/13.08.2018



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