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) Nos.819 and 820 of 2008

T.C.(A).No.819 of 2008:-

Commissioner of Income Tax,
Chennai. ... Appellant

vs.

Dr.(Mrs) S.Nirmala,
Maruthi Medical Centre & Hospital,
Perundurai Road, Erode. ... Respondent

Tax Case (Appeal) filed under Section 260A of Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 13.04.2007 in I.T(SS). A.No.202/Mds/2006 for the assessment years 1996-97 to 2002-03 till 06.03.2002 as against the proceedings of the Commissioner of income Tax (Appeals)-II, Coimbatore, in ITA.NO.370-C/2004-05 dated 4.10.2006.

T.C.(A).No.820 of 2008:-

Commissioner of Income Tax,
Chennai. ... Appellant

vs.

Dr.M.N.Sadasivam,
Maruthi Medical Centre & Hospital,
Perundurai Road, Erode. ... Respondent

Tax Case (Appeal) filed under Section 260A of Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 13.04.2007 in I.T(SS). A.No.203/Mds/2006 for the assessment years 1996-97 to 2002-03 till 06.03.2002 as against the order of Commissioner of Income Tax (Appeals) dated 4.10.2006 in I.T.A.NO.369C/04-05

For Appellant : Mr.T.R.Senthil Kumar
(in both T.Cs.) and Mr.S.Rajesh
For Respondent : Mr.Niranjan Rajagopalan
(in both T.Cs.) for M/s.G.R.Associates

COMMON JUDGMENT

(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 respondents / assessees.

2. These tax case (appeals) have 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 holding that penalty under Section 158BFA(2) of the Act cannot be levied when the assessee had retracted his own sworn statement under Section 132(4) of the Act in spite of the sworn statement recorded from the seller who admitted the receipt 'on-money'?"

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 these appeals. 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.

....

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 these tax case (appeals) 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(CS)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Commissioner of Income Tax,
Chennai.

2.The Income Tax Appellate Tribunal,
Madras "D" Bench.

3.The Commissioner of
Income Tax (Appeals)-II,
The Office of the Commissioner of
Income Tax (Appeals)-II,
Coimbatore.

4. The Office of the Commissioner of Income Tax (Appeals)-II,
Coimbatore.

+ 1 cc to Mr. T.R. Senthilkumar, Advocate Sr.35440
+ 2 ccs to M/s. G.R. Associates, Advocate Sr.35778, 35779

T.C.(Appeal) Nos.819 and 820 of 2008

PPA(CO)
EU(03/08/2018)