

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

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THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

and

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

Tax Case (Appeal) Nos.868 & 869 of 2008

The Commissioner of Income Tax
Salem

... Appellant in both TCAs

v.

N.Meenakshisundaram

... Respondent in both TCAs

Tax Case (Appeal) Nos.868/2008 :

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 23.12.2005 made in ITA.No.1826/Mds/2003 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai for the assessment year 1998-1998.

Tax Case (Appeal) Nos.869/2008 :

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 23.12.2005 made in ITA.No.1827/Mds/2003 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai for the assessment year 1995-1996.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel

For Respondent : Mr.R.Janakiraman

J U D G M E N T

(Judgement of the court was delivered by T.S.SIVAGNANAM, ,J)

Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant and Mr.R.Janakiraman learned counsel for the respondent.

2. These appeals have been filed by the Revenue challenging the common order passed by the Income Tax Appellate Tribunal in ITA.Nos.1826/Mds/2003 and 1827/Mds/2003 dated 23.12.2005 for the assessment years 1998-1999 and 1995-96.

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

T.C.A.No.868/2008

"1. Whether on the facts and in the circumstances of the case, the assessee can be treated as legal representative under section 159 of the Income Tax Act?

2. When the Income of the deceased is in the hands of the assessee is not the assessee liable to be assessed as the legal representative off the said deceased person under section 159 of the Income ax Act?"

T.C.A.No.869/2008

" Whether the Tribunal was right on the facts and circumstances of the case in upholding the order of the Commissioner of Income Tax (Appeals)?"

4. For the assessment year 1998-99, the assessee had accounted in his books a sum of Rs.4,35,800/- as gift from his father. He claimed that his father has earned income accumulated over years and lent the money to nine or more debtors, who acknowledged the assessee as the legal heir of his father, returned back debts to him. The Revenue did not find the explanation acceptable and the assessment was made

treating the said income as income from unexplained sources. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). CIT (A) by following the decisions of the Hon'ble Supreme Court, in the case of **Sri Jaiprakash reported in 219 ITR 737 (SC) and Rangalal Jajadia 79 ITR 505 (SC)**, wherein, it was held that non-service of notice on local (sic) representative was an irregularity and not illegal, directed the appellant (assessee herein) to furnish the names and addresses of the legal heirs and directed the Assessing Officer to issue notices to complete the assessment proceeding as per law. The CIT (A) having rendered such findings, ordered for deletion of the additions made in the hands of Sri.N.Meenakshisundaram (assessee herein) though he cannot be treated as legal heir of his deceased father. Aggrieved by the same, the Revenue preferred an appeal to the Tribunal, which was dismissed by the impugned order.

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5. So far as the assessment year 1995-96 is concerned, identical facts arose for consideration and the assessee succeeded before the Tribunal. The Revenue is on appeal as against the common order passed

by the Tribunal, by raising the above said question of law.

6. As noticed above, the Tribunal, after accepting the case of the assessee, directed the Assessing Officer to issue notices in the name of the legal heirs and assess the income as per law. Therefore, the Revenue cannot be stated to be aggrieved by the decision of the Tribunal. Nevertheless, these appeals have been filed in the year 2008 and are pending till date.

7. Before we examine the merits of the matter it has to be seen as to what would be the tax effect in both the appeals.

8. Admittedly, the tax effect in both the assessment years is less than the threshold limit. Tax Limit in the circular dated 15.05.2008, is Rs.4,00,000/-.

9. We may point out that though the appeals were presented on

12.06.2006, they were numbered only in the year 2008. On the date of presentation of the appeal i.e. on 12.06.2006, Circular Instruction No.2/2005, dated 24.10.2005 was in vogue, which instructed the Department that appeals shall not be filed under Section 260A of the Income Tax Act, if the tax effect is less than Rs.4,00,000/-.

10. We had considered the effect of the Circular Instructions issued by the CBDT in Tax Case (Appeal) No.901 of 2008, dated 18.04.2018 and the relevant portions of the said decision 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.

11. Thus, by applying the circular issued by the CBDT, these appeals ought not to have been filed by the Revenue during 2006. Hence for that reason alone, these Tax Case Appeals are dismissed and the substantial questions of law, which have been framed for consideration is left open. No costs.

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(T.S.S.J.) (N.S.S.J.)
23.04.2018

Index: Yes/No
Speaking Order/Non speaking

Rj

To

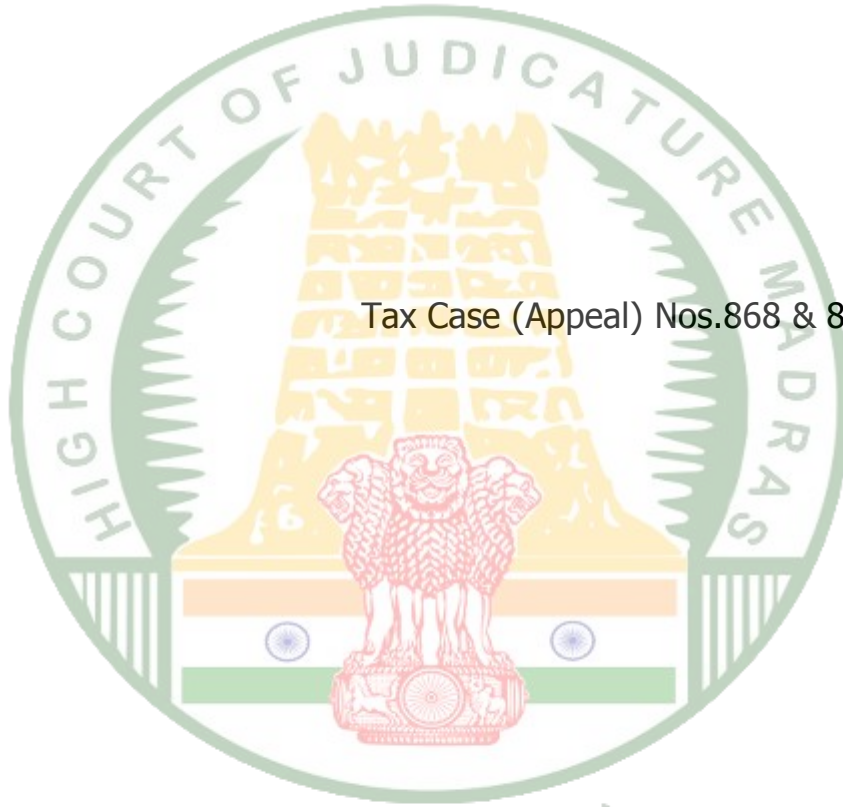
The Income Tax Appellate Tribunal,
Madras 'D' Bench,
Chennai



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T.S.SIVAGNANAM,J
AND
N.SESHASAYEE,J

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