IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). Nos.513 and 514 of 2010

Commissioner of Income Tax,
Chennai. .. Appellant in both the appeals

vs.

Tamil Nadu Industrial Development Corporation Ltd.,
19A Rukmani Lakshmipathy Road,
Egmore, Chennai - 8. .. Respondent in both the appeals

Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai "C" Bench, Chennai dated 13.11.2009 passed in I.T.A. Nos.1057/Mds/2003 and 1006/Mds/2003

against the order of the Income- Tax Appellate Tribunal, Chennai "C" Bench Chennai dated 9/10/2009 and made in ITA Nos. 1057 of 1006/Mds/2003 for the Assessment Year 1994-95 and 1995-96

against the order of the Income Tax Appellate Tribunal, Chennai Bench "C" dated 21.11.2008 and made in ITA Nos.1057 and 1006/Mds/2003 for the Assessment Year 1994-95 and 1995-96

against the order of the Commissioner of Income Tax (Appeals) IV, Chennai dated 17.2.2003 and 21.2.2003 and made in ITA.Tr.No.29/02-03 and ITA.Tr.No.30/02-03 for the Assessment Year 1994-95 and 1995-96 respectively

against the order of the Joint Commissioner of Income- Tax, Special Range-VIII, Chennai-34 dated 26.02.2001 and made in G.I.R.No.4-T/94-95/Sr-VIII and GIR No.4-T/95-96/SR-VIII for the Assessment Year 1994-95 and 1995-96 respectively.

For Appellant : Mr.M.Swaminathan
in both the appeals

For Respondent : Mr.Subbaraya Aiyar
in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The Revenue has filed these appeals by formulating the following substantial questions of law in respect of the assessment years 1994-1995 and 1995-1996:

> "(1)Whether on the facts and circumstances of the case, the Tribunal was right in holding that deduction under Section 80M is allowable on the gross dividend received?
>
> (2)Whether on the facts and circumstances of the case, the Third member of Tribunal was right in considering the issue in the light of the finding by the Accountant member alone, being that the dividend income earned is assessable as business income and consequently the gross dividend income has to be considered for deduction under Section 80 M?
>
> (3)Whether on the facts and circumstances of the case, the Third member of the Tribunal was right in dealing with the issue referred in the above question when it was not considered by the learned Judicial Member and there was no difference of opinion on this issue was referred to Third Member?"

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.Learned counsel appearing for the appellant submits that the issue involved in these appeals viz., low tax effect has already been considered by this Court in T.C.A. No.1528 of 2007 on 06.06.2018 and the following order has been passed:

> "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 this 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.”

4.By applying the above decision, we dismiss this tax case (appeal) 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."

4.In such view of the matter and in view of the circular issued by the Central Board Direct Taxes in Circular No.21/2015 dated 10.12.2015, these tax case appeals are dismissed on the ground of low tax effect, leaving the substantial questions of law open, which have been framed for consideration. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai "C" Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax,
(Appeals) IV, Chennai.

4.The Joint Commissioner of Income-Tax,
Special Range-VIII, Chennai-34.

+1cc to Mr.M.Swaminathan, Advocate Sr.47938
+1cc to Mr.Subbaraya Aiyar, Advocate Sr.48770

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srg 3/8/2018