IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

Tax Case Appeal No.789 of 2018

The Commissioner of Income Tax,
Chennai. .... Appellant / Appellant

-vs-

Shri Madhukumaran .... Respondent / Respondent

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, Chennai dated 12.10.2017 in ITA No.2165/Mds/2016, for the Assessment year 2010-11, against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, dt:31.03.2016 made in ITA No.235/CIT(A)-2/2013-14 and against the order of the Income Tax Officer, Business Ward I(3) Chennai-34, dated 18/03/13 made in PAN/GIR No.AAIPM5745L

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel

For Respondent : No appearance

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the appellant/Revenue is directed against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 12.10.2017 in ITA No.2165/Mds/2016, for the Assessment year 2010-11.

2.Heard Mrs.R.Hemalatha, learned Counsel for the appellant/Revenue.

3.The following Substantial Questions of Law have been framed for consideration:

"(i)Whether the Tribunal was correct in holding that the period of holding in the hands of the previous year is to taken into consideration for arriving at the indexed of cost of acquisition even if the impugned property devolves through gift to the subsequent owner and eventhough such benefit has not been provided for in Section 48(iii) of the I.T.Act, 1961?

(ii)is not the finding of the Tribunal bad especially when as per Explanation (iii) to Section 48 clearly states that the indexed cost of acquisition would be the year the asset was transferred for the first year in which the asset was held by the assessee or for the year beginning on 01.04.1981 whichever was later?”

4.We have perused the order of Assessment as well as the Order passed by the Commissioner of Income Tax and we find that the tax effect in this appeal is lesser than the threshold limit mentioned in Circular No.3 of 2018, dated 11.07.2018, issued by the Central Board of Direct Taxes, which fixes the monetary limit as Rs.50,00,000/- for the Department to pursue the matter. Furthermore, the Revenue has not been able to point out any distinguishing features, by which the Circular No.3 of 2018, dated 11.07.2018, cannot be applied.

5.Thus, for the above reasons, the Revenue cannot pursue this Appeal in view of the low tax effect. Hence, the Appeal is dismissed and the Substantial Questions of Law, framed for consideration, are left open. No costs. The Revenue is at liberty to seek for restoration of appeal if at a later point of time, it is found that the tax effect is above the threshold limit or to fall under the exceptional clauses mentioned in the Circular.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrm

To

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

2. The Commissioner of Income Tax,
   Chennai.

3. The Commissioner of Income Tax (Appeals) 2, Chennai

4. The Income Tax Officer, Business Ward I(3), Chennai - 34

+ 1cc to Mr.T.Ravikumar, Advocate, S.R.No.77505

+ 1cc to Mr.S.Sridhar, Advocate, S.R.No.77487

T.C.A.No.789 of 2018

BS(CO)
SSM(06/12/2018)