

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

I.T.T.A.No.816 OF 2017

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This appeal by the Revenue under Section 260A of the Income-tax Act, 1961, seeks to raise the following substantial questions of law:

“1. Whether on the facts and in the circumstances of the case, the ITAT is legally justified in overlooking the Circular issued by the CBDT in Circular No.10/DV/2013 dated 16.12.2013 wherein it is clarified that the provisions of Sec.40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year?

2. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified and correct in not appreciating and ignoring the clarification on the issue through CBDT circular No.10/DV/2013, dt.16/12/2013, which was in conformity with ratio of decisions in the case of Crescent Export Ltd., 216 Taxman 258 (Col) and Sikandar Khan N.Tunvar 357 ITR 312 (Guj) and further whether such non-appreciation has turned the decision under reference perverse both in law and on facts?”

Perusal of the order dated 30.09.2016 passed by the Income Tax Appellate Tribunal, Visakhapatnam Bench, from which the present appeal arose, reflects that the Tribunal non-suited the Revenue in I.T.A.No.381/Vizag/2015 on the short ground that the CBDT Circular No.3/2011 dated 09.02.2011 barred the Revenue from maintaining the said appeal in terms of the monetary limit prescribed thereunder.

It is not in dispute that CBDT Circular No.21/2015 dated 10.12.2015 now holds the field and in terms thereof, the Revenue could maintain an appeal before the Tribunal only if the monetary limit is Rs.10,00,000/- or above. Admittedly, this Circular would have application

to pending matters also and, therefore, by the date the Tribunal passed the order under appeal, the aforestated Circular was applicable.

Sri K.Raji Reddy, learned senior standing counsel for the Revenue, would fairly concede that the case on hand would not fall within any of the exceptions contained in the aforestated Circular dated 10.12.2015. He would however place reliance on the judgments of the Supreme Court in CIT v. Surya Herbal Ltd.¹ and Director of Income Tax v. S.R.M.B. Dairy Farming (P.) Ltd.².

Perusal of these judgments reflects that the Supreme Court was considering the CBDT Circular dated 09.02.2011 and opined that the same should not be applied *ipso facto*, particularly, when the matter has a cascading effect and if a common principle is raised in a large number of matters. In such cases, the High Court was required not to apply the monetary limits fixed in the said Circular.

It is not in dispute before us that the earlier CBDT Circular Instructions made provision for excepting cases from the monetary limits if the question raised therein had a cascading effect or was of a recurring nature. However, the Circular dated 10.12.2015 does not make a like provision for the same. In that view of the matter, the aforestated judgments cannot be extended to the Circular dated 10.12.2015.

We therefore find no error having been committed by the Tribunal in refusing to entertain the Revenue's appeal on the ground of monetary limits. No question of law, much less a substantial question of law, thus arises for consideration.

The appeal is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

P. KESHA RAO,J

Date:18.01.2018
IBL

¹ (2013) 350 ITR 300

² (2017) 87 taxmann.com 288 (SC)