Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 62O OF 2019
IN
TAX APPEAL NO.142 OF 2017
WITH
MISC. CIVIL APPLICATION NO. 621 OF 2019
IN
TAX APPEAL NO.133 OF 2017

The Principal Commissioner of
Income Tax, Panaji. ….. Applicant.
Versus
Deendayal Nagar Sahakari
Pathsaunstha Maryadit. ….. Respondent.

Mr. Amira Abdul Razaq, Standing Counsel for the Applicant.

Mr. S. Karpe, Advocate for Respondent.

Coram : M.S. Sonak &
Nutan D. Sardessai, JJ.

Date : 26th August, 2019.

P.C.:-

By filing the aforesaid Misc. Civil Applications, the Principal Commissioner of Income Tax, seeks a recall of our order dated 11th October, 2018, by which we had, in fact, disposed of the Tax Appeals.

2. Our order dated 11th October, 2018, reads thus :

"In these Appeals, the tax effect shown by the Appellant-Revenue is below 50.00 lakhs. In view of the CBDT

Circular dated 11 July 2018, pursuant to the National Litigation Policy the Income Tax Department has decided to withdraw the Appeals where the tax effect is below ₹ 50.00 lakhs. The Circular also had given the date of 20 August 2018 to the Commissioner to take a decision.

2. In view of this policy, the Tax Appeals where placed on the board on 28 August 2018, and 6 September 2018 to enable the Revenue to take written instructions. In fact, we had suggested that they should form a team to examine the matters. The learned Standing Counsel states that no specific instructions have been received from the Appellant so far, as to whether these Appeals also fall in any of the exceptions provided in the CBDT Circular. The tax effect in these Appeals is below the stipulated limit in the Circular. We had adjourned the matters from time to time along with several others and this exercise cannot be undertaken again and again. Therefore, we dispose of these Appeals, giving liberty to the Appellant to seek revival of the Appeals within a reasonable time, if upon examination it is found that the Appeals fall in one of the exceptions and, therefore need to be pursued inspite of the tax effect being below 50.00 lakhs. In view of the fact ₹ that the policy is to reduce the litigation, such a decision be taken within a period of six weeks.

3. With the above observations, the Appeals are disposed of. We are also informed that a Public Interest Litigation is pending in the Supreme Court challenging the CBDT Circular dated 11 July 2018. The disposal of these Appeals is also subject to the outcome of the said public interest litigation."

3. These Misc. Civil Applications have been taken out in pursuance of the liberty granted by us by relying upon paragraph 5 of

the Circular dated 11th July, 2018, which reads as follows :

> *"... However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeals shall be filed in respect of all such assessment years even if the tax effect is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which tax effect exceeds the monetary limit prescribed..."*

4. However, now, the CBDT has issued Circular No.17/2019 dated 8th August, 2019, in terms of which the aforesaid paragraph 5 of the Circular dated 11.7.2018 has been modified and substituted by the following :

> *"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/judgement involves more than one assessee. each assessee shall be dealt with*

separately."

5. Accordingly, it is quite clear that the Applicant, cannot any longer rely upon paragraph 5 of the Circular dated 11.7.2018, but will have to be governed by the Circular No.17/2019 dated 8th August, 2019 and the substituted paragraph 5. In terms of the substituted paragraph 5, there is no reason to institute appeals where the tax effect is below specified limit even if the subject-matter of the challenge is a common order for several assessment years.

6. For the aforesaid reasons, we see no good ground to grant the reliefs applied for in these Misc. Civil Applications. These Misc. Civil Applications are, therefore, dismissed. There shall be no order as to costs.

Nutan D. Sardessai, J. ***M.S. Sonak, J.***