IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.9.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case (Appeal) No.274 of 2009

Commissioner of Income Tax - X
Chennai. ... Appellant

Vs.

Shri.Ebrahim Akbar Mohamed ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 17.9.2004 made in ITA No.2252/Mds/97,

against the order of the Commissioner of Income Tax (Appeals)-V,Chennai-34 dated 21/08/1997 and made in ITA No.105/97-98 for the Assessment Year 1996-97,

against the order of the Assistant Commissioner of Income Tax, (Asst-1), Circle-I, Chennai-34, dated 27/03/1997 and made in PAN/GIR No.6294-A for the Assessment Year 1996-97.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.V.Pushpa, Jr. Standing Counsel

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 17.9.2004 made in ITA No.2252/Mds/97, for the Assessment Year 1996-97, by raising the following substantial questions of law:

"i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the order of the Commissioner of Income Tax (Appeals) rectifying the original order wherein repayment of loan on voluntarily created mortgage by the assessee was allowable deduction from the sale consideration while computing the capital gains was not correct, on the ground that the Supreme Court's decision in 227 ITR 240 relied by the CIT(Appeals) in the order under Section 154 did not obliterate the pre-existing debate on the issue?

ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not observing that the Supreme Court in 227 ITR 240 has only restated the pre-existing law and has clearly held that in the case of mortgage created by the assessee himself no deduction could be allowed and, therefore, the assessee's application under Section 256(2) of the Act, in that case did not raise an "arguable question of law" and the said application was rightly rejected by the High Court?"

2. When the matter is taken up for hearing, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed, as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1. Commissioner of Income Tax - X,
Chennai.

2. Income Tax Appellate Tribunal,
'B' Bench, Chennai.

3. The Assistant Commissioner of
Income Tax, Circle-I(Asst.I)
Chennai.

4.The Commissioner of Income Tax (Appeals-V),
Chennai-34.

sv[co]
srg 24/10/2019