IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.754 of 2009

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

Vs.

M/s.Medicorp Technologies India Ltd..
... Respondent/Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 16.01.2009, made in ITA No.2328/Mds/2007 and this appeal preferred against the Commissioner of Income Tax (Appeals)-V 121, Mahatma Gandhi Road, Chennai-34 dated 25.6.2007 made in ITA 201/2004-2005 for the Assessment Year 2002-2003 and preferred against the Assistant Commissioner of Income Tax Company Circle IV (2) Chennai 34 dated 31.03.2004 made in P.A.No/GIR No.ME5/AAAFM1293P for the Assessment Year 2002-2003.

For Appellant : Mr.S.Rajesh,
for Mr.Karthik Ranganathan.
For respondent : No appearance

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, Chennai 'A' Bench, dated 16.01.2009, in ITA No.2328/Mds/2007, by raising the following substantial questions of law :

"(1) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee company was entitled to depreciation under clause (ii) of Section 32 (1) of the Income Tax Act on the non-compete fee paid to Medispan Limited, wrongly interpreting the rule of ejusdem generis and considering the non-compete fee as of the same nature of intangible assets like know-how, patents, copyrights, trade marks and other rights of similar nature mentioned in clause (ii) of Section 32 (1) of the Income Tax Act ?

(2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in differing from the decisions of the co-ordinate Benches instead of referring the matter to the President of the Tribunal to refer the issue to a Special Bench, without following the decision of the Madras High Court in CIT vs L.G.Ramamurthy & Ors, 110 ITR 453 (Mad) ?

2. When the matter is taken up for hearing, the learned Standing Counsel for the Department brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018, dated 11.7.2018, 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.50.00 lakhs.

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 not pressed, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Chennai 'A' Bench,
Chennai.

2.The Commissioner of Income Tax,
Appellate) V
No.121, Mahatma Gandhi Road,
Chennai-34.

3.The Assistant Commissioner of Income
Tax Company Circle IV (2)
Chennai-34.

TCA No.754 OF 2009

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srg 1/3/2019