In the High Court of Judicature at Madras

Dated : 19.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.564 to 566 of 2010

Commissioner of Income Tax I,
Chennai ...Appellant in all the TCAs

Vs.

Shri.C.Aswini Dutt, Hyderabad. ...Respondent in both TCAs.564 & 565/2010

M/s.Swapna Cinema, Hyderabad. ...Respondent in TCA.566/2010

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 12.6.2009 made in ITA.Nos.1599, 1600 and 1603/H/ 2008 on the file of the Income Tax Appellate Tribunal, Hyderabad 'B' Bench respectively for the assessment years 2003-04, 2004-05 and 2003-04.

TCA.No.564 of 2010 :

against the order of the Commissioner of the Income Tax (Appeals) -I, Hyderabad, dated 29/09/2008 and made in ITA.Nos.0037/CC-2, Hyd/CIT(A) -I/07-08, for the assessment year 2003-2004 against the order of the Assistant Commissioner of Income Tax Central Circle -2 Hyderabad in PAN.No.ABYPA9074D, dated 26/06/2007 for the assessment year 2003-04.

TCA.No.565 of 2010 :

against the order of the Commissioner of Income Tax (Appeals) -I, Hyderabad, dated 29/09/2008 and made in ITA.No.0036/CC-5, Hyd/CIT(A)-I/07-08, for the assessment year 2004-05, against the order of the Assistant Commissioner of Income Tax Central Circle-2, Hyderabad dated 26/06/2007 in PAN.No.ABYPA9074D for the assessment year 2004-05.

TCA.No.566 of 2010 :

against the order of the Commissioner of Income Tax (Appeals)-I, Hyderabad, dated 01/10/2008 in ITA.No.00038/CC-2, Hyd/CIT(A)-I/07-08 against the order of the Assistant

https://hcservices.ecourts.gov.in/hcservices/

Commissioner of Income Tax, Central Circle -2, Hyderabad, dated 28/06/2007 in PAN.No.AAQFS0447K, against the Assessment order dated 28/12/2006 in PAN./GIR.No.AAQFS0447K, for the financial year 2003-04.

For Appellant : Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani, SC

Respondents : served and no appearance

COMMON JUDGMENT

(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant – Revenue.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 12.6.2009 made in ITA.Nos.1599, 1600 and 1603/H/2008 on the file of the Income Tax Appellate Tribunal, Hyderabad 'B' Bench respectively for the assessment years 2003-04, 2004-05 and 2003-04.

3. The appeals were admitted on 12.7.2010 on 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 canceling the penalty of Rs.40,96,087/-, Rs.40,96,087/- and Rs.2,47,460/- respectively levied under Section 271(1)(c) of the Income Tax Act, 1961 based on the incriminating evidence found during the search conducted in the premises of the assessee under Section 132 of the Act in the form of seized documents, which revealed unaccounted cash receipts not included in the return of income ?
>
> ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that when the assessee was found to have been maintaining two sets of accounts, he could disown one set of accounts without any obligation to explain the discrepancies within the two sets of accounts and thereby holding that no penalty under Section 271(1)(c) of the Act could be levied for concealment of income ? And

https://hcservices.ecourts.gov.in/hcservices/

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that when there is admission on the part of the assessee of concealed income after being confronted with the incriminating material found during the search, there was any burden on the Assessing Officer to prove the concealment disregarding the several judicial rulings on this issue like 271 ITR 286?”

4. The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in the respective cases is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeals are dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect in the respective cases is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeals to be heard and decided on merits.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Hyderabad 'B' Bench.
2.The Commissioner of Income Tax(Appeals)-I, Hyderabad.
3.The Assistant Commissioner of Income Tax,
Central Circle-2, Hyderabad.

+2cc to M/s.Subbaraya Aiyar, Advocate SR.No.70480
+1cc to M/s.M.Swaminathan, Advocate Sr.No.70426
+1cc to M/s.T.R.Senthil Kumar, Advocate Sr.No.70470

AKM/20.11.19/3P-8C / TCA.Nos.564 to 566 of 2010

सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/