In the High Court of Judicature at Madras

Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal No.293 of 2011 & MP.No.1 of 2011

The Commissioner of Income
Tax, Salem. ...Appellant/Respondent

Vs

Shri S.Selvaraj ...Respondent /Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.8.2010 in ITA No.1259/Mds/2009 on the file of the Income Tax Appellate Tribunal Madras 'D' Bench for the assessment year 2001-02.

For Appellant : Mr.T.R.Senthilkumar, SSC &
Ms.K.G.Usharani, JSC

For Respondent : Mr.S.Sridhar

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee, 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 deleting the additions made on account of unaccounted sales over and above what was admitted by the assessee ignoring all relevant materials and evidence discussed in the assessment order ? And
>
> ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessing Officer was not justified in

> estimating the profit on the unaccounted sales at the average rate of 7.24% based on the actual profits on accounted sales shown by the assessee and directing the Assessing Officer to estimate the profit at 5%? ”

3. The Revenue seeks to withdraw this appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. Consequently, the connected MP is also dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

RS

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Madras 'D' Bench.

2.The Commissioner of Income Tax,
Salem.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 218
+1cc to Mr.S.Sridhar, Advocate, S.R.No. 368

TCA.No.293 of 2011
and MP.No.1 of 2011

SR(CO)
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