In the High Court of Judicature at Madras

Dated : 27.08.2019

Coram :

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

Tax Case Appeal No.561 of 2015

Commissioner of Income Tax,
Chennai. ...Appellant

Vs

M/s.Celebrity Fashion Ltd.,
SDF-IV, 3rd main road,
MEPZ-SEZ, Tambaram, Chennai - 600 045.
PAN:AAACC3696D ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 27.08.2013 made in ITA.No.1250/MDS/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2009-10 against the order dated 27/02/2013 made in ITA.No.682/11-12/A-III on the file of the Commissioner of Income Tax(A) III, Chennai against the order dated 29/12/11 vide PAN/GIR AAA CC3696D on the file of the Assistant Commissioner of Income Tax, Company Circle-1(3), Chennai-34

For Appellant : Mr.T.Ravikumar, SSC
and Ms.R.Hemalatha, SSC
For Respondent: Mr.A.S.Sriraman
for Mr.S.Sridhar

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

We have heard Mr.T.Ravikumar, learned Senior Standing Counsel, and Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/revenue and Mr.A.S.Sriraman, learned counsel for Mr.S.Sridhar, learned counsel appearing for the respondent/assessee.

2.This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 27.08.2013 made in ITA.No.1250/MDS/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2009-10.

3.The appeal was admitted on 23.07.2015 on the following substantial questions of law :

"i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in allowing the deduction of expenses incurred by the assessee towards overseasselling commissin when the assessee had failed to deduct tax at source under Section 195 on the same?

ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in not considering the effect of Explanation to Section 9 inserted by Finance Act, 2010 whereby income received by a non-resident for technical services is deemed to accrue in India irrespective of whether the non-resident has an establishment in the country and whether the non-resident had rendered the service outside India or India?

iii) Whether in the facts and circumstances of the case, the Tribunal was right in allowing the deduction of swap loss incurred by the assessee on speculative transactions as a business loss?

iv) Whether in the facts and circumstances of the case, the Tribunal was right in overlooking the fact that the forward contract entered into by the assessee and ultimately ending in loss were settled without physical delivery and therefore fell within the scope of Section 45(a) of the Income Tax Act?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is 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 this case is less than the threshold limit.

5.In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect 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 appeal to be heard and decided on merits. No costs.

-s/d-
Assistant Registrar(CJ Conf)

True Copy

Sub-Assistant Registrar

cse
To

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

2.The Commissioner of Income Tax (A)-II
No.121 Mahatma Gandhi Road
Gandhi Raod, Chennai-34

3.The Assistant Commissioner of Income-Tax
Company Circle-1(3)
Chennai-34

+1 cc to Mr.S.Sridhar Advocate sr74513

TCA.No.561 of 2015

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