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 Nos.567 and 568 of 2015

The Commissioner of Income Tax,
Chennai. ...Appellant

Vs

Smt. Vijaya Srinivasan ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 30.08.2013 made in ITA.Nos.135 and 136/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2005-06 and 2008-09.

against the order of the Commissioner of Income Tax (A) -VI, Chennai dated 09-07-2012 made in I.T.A.Nos.533/10-11 and 534/10-11 for the Assessment years 2005-06 & 2008-2009 respectively and against the order of Assistant Commissioner of Income Tax Circle - II, Chennai order dated 31.12.2010 made in P.A.No/GIR.No. ACEPU1779M.

For Appellant: Mr.T.Ravikumar, SSC assisted by Ms.R.Hemalatha, SSC
For Respondent: Mr.R.Kumar

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

We have heard Mr.T.Ravikumar, learned Senior Standing Counsel assisted by Ms.R.Hemalatha, learned Standing Counsel appearing for the appellant - Revenue and Mr.R.Kumar, learned counsel appearing for the respondent - assessee.



2.These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961, are directed against the common order dated 30.08.2013 made in ITA.Nos.135 and 136/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2005-06 and 2008-09.

3.The appeals were admitted on 18.08.2015 on the following substantial questions of law :

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that shares held by the assessee for a longer period is to be treated as investment resulting in long term capital gains and shares held for shorter duration was to be considered as income from business?

(ii) Whether the Tribunal was right in amending the order passed in ITA 1846 and 1847 which amounted to review of the original order passed in M.P.Nos.101 and 102/mds/2013 especially when the Tribunal did not have any such power of review?

(iii) Is not the finding of the Tribunal perverse especially when it had held the shares held for a period of 30 days were to be treated as short term and for a period of more than 30 days were to be treated as long term investment and the same cannot be the yardstick to determine the taxability of income under the head business? and

(iv) Whether the computation of income on profit on sale shares constitute long term capital gains or business income?"

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. 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.

2.The Commissioner of Income Tax (Appeals)-VI,
Chennai.

3.The Assistant Commissioner of Income Tax,
Circle – II,
Chennai.

+1cc to Mr. T.Ravikumar, Advocate, S.R.No. 73346
+2cc to Mr. T.N.Seetharaman, Advocate, S.R.No. 74489 & 74490

TCA.Nos.567 and 568 of 2015

CP(CO)
GN(06/11/2019)