IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.347 of 2013

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

-vs-

M/s.Susira Engineering Industries P. Ltd.,
No.G 16, Ambattur Industrial Estate,
Ambattur, Chennai-600 028.
PAN: AACS7730C .. Respondent/Respondent

Appeal under Section 260A of the Income-tax Act, 1961, against the order dated 30.10.2012, on the file of the Income-tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.1594/Mds/2012 for the assessment year 2009-10, as against the order dated 31/05/2012 of the Commissioner of Income Tax(Appeals) in ITA.No.137/11-12 for the assessment year 2009-10, and as against the order dated 28/11/2011 for the PAN.No.AAACS7730C, for the assessment year 2009-10, of the office of the Income Tax, Company Ward VI(1) , Chennai.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
: assisted by Ms.K.G.Usharani,
Junior Standing Counsel

For Respondent : Mr.V.S.Jayakumar

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant/Revenue under Section 260A of the Income-tax Act, 1961, is directed against the order dated 30.10.2012, passed by the Income-tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.No.1594/Mds/2012 for the assessment year 2009-10.

2.The above appeal has been filed raising the following substantial questions of law:-

> "(i) Whether under the facts and circumstances of the case, the Tribunal was right in deleting the disallowance made by the assessing officer under section 40 (a) (ia)?
>
> (ii) Whether under the facts and circumstances of the case, the Tribunal was right in holding that the amendment made to section 40 (a) (ia) by Finance Act 2010, would apply retrospectively, though the amendment is made with effect from 1.4.2010?
>
> (iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in not deciding the issue, whether the disallowance under section 40 (a) (ia) would be applicable only with respect to the amounts which remain payable as on the last due date of the previous year relevant to the assessment year, which was decided in favour of the assessee by the Commissioner of Income Tax (Appeals) following the decision of the special bench in the case of M/s.Merilyn Shipping & Transports (ITA No.477/viz/2008), which has not attained finality?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Junior Standing Counsel for the appellant and Mr.V.S.Jayakumar, learned counsel for the respondent.

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 08.08.2019 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Officer,
Company Ward VI(1), Chennai.

2.The Commissioner of Income-tax (Appeals)-V,
121, Mahatma Gandhi Road, Chennai-600 034.

3.The Income-tax Appellate Tribunal 'D' Bench, Chennai.

+1cc to Mr.V.S.Jayakumar, Advocate SR.No.71913
+1cc to Mr.T.R.Senthil Kumar, Advocate SR.No.72312

AKM/01.11.19 /3P-6C/

T.C.A.No.347 of 2013