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.862 of 2013

The Commissioner of Income Tax, Chennai ...Appellant

Vs

Shri S.K.Sabhapathy ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 19.7.2013 in ITA No.485/Mds/2013 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment year 2009-10 and against the Order of the Commissioner of Income Tax (Appeals) – IX, Chennai-34, dated 28/12/2012 passed in ITA.No. 226/11-12 against the Order of the Deputy Commissioner of Income Tax, Circle – I, Vellore, dated 23/12/2011 passed in PAN/GIR.No. AFUPK0909B /11973-S Assessment Year 2009-2010.

For Appellant : Mr.M.Swaminathan, SSC, Ms.V.Pushpa, JSC and Ms.S.Premalatha, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Senior 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. The appeal was admitted on 07.3.2014 on the following substantial questions of law :

> "i. Whether, under the facts and circumstances of the case, the Income Tax

> Appellate Tribunal was correct in holding that the disallowance under Section 14A read with Rule 8D (2)(ii) cannot be made since the investments, yielding exempt income, have been made out of non interest bearing funds ?
>
> ii. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding

that the disallowance under Section 14A read with Rule 8D (2)(iii) cannot be made since there is no finding that the assessee incurred any expenditure so as to invoke Section 14A ? and

iii. Whether, based on the material available before it, the Income Tax Appellate Tribunal could have come to the conclusion that no disallowance of interest and other expenses is to be made under Section 14A of the Income Tax Act? ”

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 In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law framed are left open.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.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Commissioner of Income Tax, Chennai.

3.The Commissioner of Income Tax (Appeals)-IX,
Chennai.

4.The Deputy Commissioner of Income Tax,
Circle – I, Vellore.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No. 63
+1cc to Mr.M.Muthukumar, Advocate, S.R.No. 26

TCA.No.862 of 2013

CA(CO)
GN(15/02/2019)