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.903 of 2013

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

Vs

M/s.Shriram Engineering Construction
Company Ltd. (now merged with
Shriram EPC Ltd.), Chennai-32. ..Respondent / Appellant

Prayer:

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.5.2013 in ITA No.541/Mds/2013 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the assessment year 2004-05 against the order of the Commissioner of income Tax (Appeals)-V, Chennai 34, dated 31.12.2012 made in ITA.507/2006-07 ,Preferred against the order dated 18.12.2006 made in AAACS46442/GIR NO.SH157, by the Income Tax Officer (OSD),Company Circle VI (2), Chennai.

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

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 circumstances of the case, the Income Tax Appellate Tribunal was correct in upholding the order of the Commissioner of Income Tax (Appeals) directing the Assessing Officer to delete disallowance of deduction under Section

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ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee company is a developer and not a works contractor, who undertakes civil contracts for the projects of the Central State Government or Local Authorities and when the assessee company is neither (i) developing and maintaining nor (ii) developing, operating and maintaining the infrastructure facility, for claiming deduction under Section 80I(4) of the Income Tax Act ? And

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the assessee is a developer and not a works contractor?"

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 In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open.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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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

2.The Commissioner of Income Tax (Appeals)-V, Chennai 34,

3.The Income Tax Officer (OSD),Company Circle VI(2), Chennai.
+1cc to Mr. T.R.Senthilkumar, Advocate SR.No. 215

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