In the High Court of Judicature at Madras

Dated : 30.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.264 of 2016 & CMP.No.5543 of 2016

The Commissioner of Income
Tax, Central Circle, Chennai-34 ...Appellant

Vs

M/s.Viswams, Tirunelveli. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 05.2.2015 made in ITA.No.1091/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2003-04, against the order of the Commissioner of Income Tax Appeals Central I in ITA.NO.247/10-11 dated 31.01.2014 in the assessment year 2003-04.

against the order of the Deputy Commissioner of Income Tax Central Circle IV(1), Chennai dated 30.12.10 PAN. AADFV5601A in the assessment year 2003-04.

For Appellant: Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani, SC

For Respondent: Mr.R.Venkatanarayanan for M/s.Subbaraya Aiyer Padmanabhan

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.R.Venkatanarayanan, 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 05.2.2015 made in ITA.No. 1091/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2003-04.

3. The appeal was admitted on 26.4.2016 on the following substantial questions of law :

> "i. Whether on the facts and circumstances of the case, the Appellate Tribunal was right in quashing the assessment made under Section 153A, as there are no seized materials to make fresh assessments ?
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> ii. Whether on the facts and circumstances of the case, the Appellate Tribunal is correct in not appreciating that the new search assessment procedure under Section 153A of the Act wherein the 'total income' is to be determined whereas in the old search assessment procedure, the 'undisclosed income' is to be determined ? and
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> iii. Whether in the facts and circumstances of the case, the Tribunal is correct in holding that any assessment under Section 153A can be done only based on incriminating material ignoring the non-obstante clause which excludes reopening under Section 147?"

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. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Besant Nagar,
Chennai 'C' Bench.

2.The Commissioner of Income Tax Appeals,
Central I Chennai.

3.The Deputy Commissioner of Income Tax,
Central Circle IV(1), Chennai.

+1cc to M/s.Subbaraya Aiyer Padmanabhan, Advocate sr.75934
+1cc to Mr.Senthilkumar, Advocate sr.75717

TCA.No.264 of 2016 &
CMP.No.5543 of 2016

mg(co)
nr 14/11/2019