IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

T.C.A.Nos.194 & 195 of 2018

Principal Commissioner of Income Tax
Central I,
No.108, Mahatma Gandhi road,
Chennai. ... Appellant in both the appeals

Vs

M/s.India Poultry Farm,
No.45, NSB Road,
Trichy - 2.
PAN: AAA FT 9753 D ...Respondent in both the appeals

COMMON PRAYER: Tax Case Appeals filed under Section 260A of Income Tax Act, 1961 against the order dated 25.01.2017 in I.T.A.No.1633 & 1634/Mds/2013 on the file of the Income Tax Appellate Tribunal Chennai 'D' Bench for the assessment year 2001-02 & 2002-03.

ITA.Nos. 1633 and 1634/MDS/2013 against Deputy Commissioner of Income Tax, Central Circle IV (I), Chennai 34, in ITA.Nos. 234 & 235/MDS/2012 for the Assessment year 2001-2002 and 2002-2003 against the Commissioner of Income Tax (Appeals) I, Chennai -34 in ITA.Nos. 16 & 17/09-10 dated 16/11/2011 in PAN AAA FT 9753 D for the Assessment Year 2001-2002 and 2002-2003.

For Appellant : Mr.T.R.Senthil Kumar

For Respondent : Mr.M.Kaushik for Mr.S.Sridhar

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

These tax case appeals have been filed against the order of the Income Tax Appellate Tribunal dated 25.01.2017 in I.T.A.No.1633 & 1634/Mds/2013 in dismissing the appeals filed by the Department of Revenue against the order of the Commissioner of Income Tax (Appeals) by which the appeal filed by the assessee was allowed.

2.Heard Mr.T.R.Senthil Kumar, learned Counsel for the appellant and Mr.M.Koushik, learned Counsel for the respondent.

3.These Tax Case Appeals are admitted on the following substantial questions of law;

> “1.Whether on the facts and circumstances of the case, the AppellateTribunal was correct in holding that there is no 'transfer' of asset within the meaning of Section 2(47) of Income Tax Act and in terms of Section 45 (4) in respect of building and development work?
>
> 2.Whether the Appellate Tribunal is correct in law in holding that the building and development work belongs to the partner Shri.T.Manavalan, by ignoring the fact the same were constructed and developed by the partnership firms and depreciation was claimed by the assessee-firm against such assets?"

4.Mr.T.R.Senthil Kumar, learned Counsel for the appellant would submit that the tax effect in this case is less than Rs.50,00,000/- and is covered by Circular No.3/2018 dated 11.07.2018 issued by the Director, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, Delhi. As per the said circular, the monetary limit to file an appeal before the High Court is fixed at Rs.50,00,000/-. In this case, tax effect is less than Rs.50,00,000/- and therefore, these appeals have to be dismissed.

5.This Court perused the circular dated 11.07.2018 and Paragraph Nos.2 & 3 of the Circular, which prescribes monetary limit for filing appeal. Paragraph Nos.2 & 3 is usefully extracted as follows:

> "2.In supersession of the above circular, it has been decided by the Board that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs / appeals before Supreme Court keeping in view the monetary limits and conditions specified below
>
> 3.Henceforth, appeals / SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given under:

| S.No. | Appeals / SLPs in Income-tax matters | Monetary Limit (Rs.) |
|---|---|---|
| 1. | Before Appeallate Tribunal | 20,00,000 |
| 2. | Before High Court | 50,00,000 |
| 3. | Before Supreme Court | 1,00,00,000" |

6.In view of the submissions made by the learned counsel appearing on behalf of the appellant and also in view of the Circular No.3/2018 dated 11.07.2018 issued by the

Director, Central Board of Direct Taxes, Delhi, these Tax Case Appeals are dismissed on account of tax effect. However, the substantial questions of law framed are left open. In the event the tax effect is above the 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 (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.Principal Commissioner of Income Tax
Central I,
No.108, Mahatma Gandhi road,
Chennai.

2.The Deputy Commissioner of Income Tax,
Central Circle IV (I), Chennai 34.

3.The Commissioner of Income Tax (Appeals) I,
Chennai - 34.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No. 97441
+1cc to Mr.S.Sridhar, Advocate, S.R.No.96848

T.C.A.Nos.194 & 195 of 2018

RJI(CO)
GN(22/01/2020)