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.355 of 2016

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

Vs.

M/s.Indo Shell Cast P. Ltd.,
Coimbatore-21. ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 28.8.2015 made in ITA.No.209/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2009-10, against the Appellate order of the Commissioner of Income Tax (Appeals) -I, Coimbatore, dated 01.11.2012 and made in Appeal No.348/11-12 for the assessment year 2009-10; and against the Assessment order of the Assistant Commissioner of Income Tax, Company Circle -1(1), Coimbatore, dated 28.12.2011 and made in PAN.No./GIR.No.AAAC14299N for the assessment year 2009-10.

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

For Respondent : Ms.Sree Lakshmi Valli

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 Ms.Sree Lakshmi Valli, 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 28.8.2015 made in ITA.No. 209/Mds/2013 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2009-10.

3. The appeal was admitted on 07.6.2016 on the following substantial questions of law :

> “i. Whether on the facts and in the circumstances of the case, the Tribunal is

justified in law in holding that the loss on derivative transactions is trading loss thereby over viewing the fact that when no actual delivery has taken place, the transactions in question fall within the definition of speculative transaction as per Section 43(5) of the Income Tax Act ? and

ii. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in following the ratio of the decision in the case of M/s.Magestic Exports when the facts of the case are not applicable to the present case ?”

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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'B' Bench, Chennai.
2.The Commissioner of Income Tax, Coimbatore.
3.The Commissioner of Income Tax(Appeals) -I, Coimbatore.
4.The Assistant Commissioner of Income Tax,
Company Circle 1(1), Coimbatore.

+1 cc to M/s.T.R.Senthil Kumar,Advocate Sr.No. 75718
+1 cc to M/s.Sree Lakhsmi Valli, Advocate Sr.No.75982

AKM/21.11.19/2P-7C / TCA.No.355 of 2016