IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.8.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.449 of 2016

The Commissioner of Income Tax, Chennai ...Appellant

Vs

M/s.Aishwarya & Co. P. Ltd., Chennai-1. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 29.5.2015 made in ITA.No.860/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2008-09 preferred against the Order of the Commissioner of Income Tax (Appeals),Central)-I, Chennai -34, dated 26.12.2013 made in ITA No.208/2013-14 against the Order passed by the Assistant Commissioner of Income Tax, company Circle-1(3), Chennai -34, dated 24.12.2010 for the Assessment Year 2008-2009 for GIR/PIN AAACA 3161H.

For Appellant: Mr.T.Ravikumar, SSC &
Mrs.R.Hemalatha, SSC

For Respondent:Ms.J.Sree Vidhya

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.Ravikumar and Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant – Revenue and Ms.J.Sree Vidhya, 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 29.5.2015 made in ITA.No. 860/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2008-09.

3. The appeal was admitted on 18.7.2016 on the following substantial questions of law :

"i. Whether, on the facts and circumstances of the case, the Tribunal was right in deleting the disallowance of Rs.1,08,22,078/- being the loss on account of future and option set off against business profit ?

ii. Is not the finding of the Tribunal bad especially when stock derivative trading loss incurred by a company is a speculative loss, which should be set only against speculative gains ? And

iii. Whether, on the facts and circumstances of the case, the finding of the Tribunal is proper especially in view of the Explanation to Section 73 and Explanation 2 to Section 28 whereby the loss is a speculative loss since brokerage income on shares and securities do not find a place in the list of exception provided in the Explanation to Section 73?"

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.

RS

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench., Chennai.

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

3. The Deputy Commissioner of Income Tax,
company Circle-1(3), Chennai -34,

4.The Assistant Commissioner of Income Tax,
company Circle-1(3), Chennai -34,

+1cc to Mr.T.Ravikumar, Advocate, SR.No.71104
+1cc to M/s.J.Sree Vidya, Advocate, SR.No.71731

Kak(15/10/2019)