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.454 of 2016

Principal Commissioner of Income Tax-4, Chennai ...Appellant

Vs

M/s.KFJ Gold & Diamond Pvt. Ltd., Chennai-40. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.9.2015 made in ITA.No.2017/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2009-10 against the order of the Commissioner of Income Tax (Appeals)-II, Chennai in ITA No.1522/2013-14 dated 19/02/2014 and against the order of the Assistant Commissioner of Income Tax Company Circle (II)(4) Chennai, PAN/GIR No.AACCK7263K, dated 26/12/2011.

For Appellant : Mr.Karthik Ranganathan, SSC

For Respondent : Ms.E.Malini for M/s.Pass Associates

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the appellant - Revenue and Ms.E.Malini, learned counsel appearing for the respondent - assessee.

WEB COPY

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 30.9.2015 made in ITA.No. 2017/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2009-10.

3. The appeal was admitted on 02.8.2016 on the following substantial questions of law :

https://hcservices.ecourts.gov.in/hcservices/

"i. Whether, on the facts and circumstances of the case, the Appellate Tribunal is correct in law in holding that the losses from commodity trading is to be allowed to set off against the regular business income of the assessee ?

ii. Whether, on the facts and circumstances of the case, the Appellate Tribunal is correct in holding that the transaction on commodities carried on by the assessee on MCX stock exchange during the financial year 2008-09 would be eligible for being treated as non speculation within the meaning of Section 43(5)(d), when MCX stock exchange is notified as a recognized stock only with effect from the date of publication of Notification No.46/2009 dated 22.5.2009 issued by the CBDT in the official gazette ? And

iii. Whether, on the facts and circumstances of the case, the Appellate Tribunal is correct in not following the Apex Court's decision in the case of Reliance Jute Industries Ltd. [reported in 120 ITR 921 (SC)] wherein it was held that the amended provisions of sections come into force from the first day of the assessment year?"

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(CCC)

//True copy//

Sub Assistant Registrar

सत्यमेव जयते
WEB COPY

RS

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

2. The Commissioner of Income Tax, Appeals II, Chennai.

3. The Assistant Commissioner of Income Tax,
Company Circle II(4) Chennai.

TCA.No.454 of 2016

KK(CO)
GMY(11/10/2019)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/