IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

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

Tax Case Appeal Nos.304 and 305 of 2017
and
C.M.P.No.8698 of 2017

Commissioner of Income Tax,
Media Circle, Chennai. .. Appellant in both Appeals/ Respondent

-vs-

Shri S.P.Balasubrahmanyam,
No.16, Kamdar Nagar,
Chennai-600 034.
PAN: AADPB 4195 J .. Respondent in both Appeals/ Respondent

Appeals under Section 260A of the Income-tax Act, 1961, against the common order dated 05.08.2016, made in I.T.A.Nos.696/Mds/2016 and 1160/Mds/2016 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2006-07 Against the order dated 29.01.2016 made in ITA.NO.81/2011-2012 on the file of the Commissioner of Income Tax Appeals 14, chennai 34 for the Assessment Year 2006-2007 and against the order dated 07.12.2011 made in PAN/GIR NO. AADPB 4195 J on the file of the Deputy commissioner of Income tax -I Media circle-I,chennai for the Assessment Year 2006-07 and against the order dated 26.12.2008 made in PAN/GIR NO.AADPB 4195 J on the file of the Additional Commissioner of Income Tax Media Range, chennai for the Assessment Year 2006-2007.

For Appellant (In both Appeals)	:	Mr.M.Swaminathan, Senior Standing Counsel assisted by Ms.V.Pushpa Standing Counsel
For Respondent (In both Appeals)	:	Mr.J.Balachandar

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COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals filed by the Revenue under Section 260A of the Income-tax Act, 1961 are directed against the common order dated 05.08.2016, made in I.T.A.Nos.696/Mds/2016 and 1160/Mds/2016 on the file of the Income Tax Appellate Tribunal 'C' Bench, Chennai for the assessment year 2006-07.

2.The appeals have been filed raising the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Section 40(a)(ia) of the Income Tax Act are applicable only to the amounts of expenditure which are payable as on 31st March of the relevant previous year and it cannot be invoked to disallow expenditure which had been actually paid during the previous year without deduction of tax at source?
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> (ii) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal was justified and correct in deleting the addition made u/s 40(a)(ia) on account of short deduction of tax relying on the decision of CIT vs. S.K.Tekriwal (361 ITR 432) (Cal), ignoring the decision of Kerala High Court in the case of CIT vs. P.V.S.Memorial Hospital Ltd. (2016) (380 ITR 284) (ker)?
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> (iii) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal was justified and correct in remitting the issue of addition u/s 40(a)(ia) relying on the decision of Income Tax Appellate Tribunal Special Bench at Vizag in the case of Merilyn Shipping & Transporters when such decision was stayed by Andhra Pradesh High Court? and
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> (iv) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal was right in remitting the issue of addition u/s 40(a)(ia) relying on the decision in Merilyn Shipping & Transporters and ignoring the decisions in

CIT vs. Sikandarkhan N. Tunvar & Ors (Guj) (357 ITR 312), CIT vs. Crescent Export Syndicate (Cal) (216 Taxman 258), Palam Gas Service vs. CIT (HP) (370 ITR 740), P.M.S. Diesels vs CIT (P & H) (374 ITR 562) and Thomas George Muthoot vs. CIT (Ker) (63 taxmann.com 89)?"

3.Heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Standing Counsel for the appellant - and Mr.J.Balachandar, learned counsel for the respondent.

4.The learned Senior Standing Counsel for the appellant submits that the above appeals are not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019, dated 08.08.2019 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 appeals are 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 appeals to be heard and decided on merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr

To

1.THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI.
2.THE COMMISSIONER OF INCOME TAX APPEALS 14, CHENNAI 34
3.THE DEPUTY COMMISSIONER OF INCOME TAX -I MEDIA CIRCLE-I,CHENNAI.
4.THE ADDITIONAL COMMISSIONER OF INCOME TAX MEDIA RANGE, CHENNAI

+1cc to Mr.Swaminathan , Advocate SR.No. 75042

T.C.A.Nos.304 and 305 of 2017

A.SK(15/11/2019)