In the High Court of Judicature at Madras
Dated : 02.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.626 & 627 of 2017 & CMP.No.15835 of 2017

Principal Commissioner of Income Tax-2,
Chennai-34 ...Appellant

Vs

M/s.ETA Star Appliances Pvt. Ltd.,
Chennai-34 ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 05.10.2016 in ITA Nos.469 and 470/Mds/ 2016 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench respectively for the assessment years 2009-10 and 2012-13 respectively against the orders of Commissioner of Income Tax(Appeals)-6, Chennai dated 23/12/2015.

For Appellant : Mr.Karthik Ranganathan, SC

For Respondent : Mr.M.P.Senthilkumar
for Mr.G.Baskar.

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

Heard the learned counsel for the appellant.

2. These appeals by the Revenue challenge the common order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. These appeals are filed by the Revenue by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in remitting back the issue to the file of the Assessing Officer with a direction to verify the books of accounts of the assessee whether the service commission was debited when the sales made and if the assessee charged service commission as soon as the sales was made, the claim of the

assessee is to be allowed, as it was related to the sales of air conditioners ? And

ii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in remitting back the issue, when, as per the assessee's own version, it would reverse the service commission after a lapse of three years and this shows that the provision created was a contingent liability and not an ascertained one?”

3. The Revenue seeks to withdraw these appeals on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, these appeals are dismissed as withdrawn and the substantial questions of law raised are left open. In the event, in any any of the appeals, the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the 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. Consequently, the connected CMP is also dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.

2.The Principal Commissioner of Income Tax-2,
Chennai -34.

3.The Commissioner of Income Tax (Appeals)-6,
Chennai.

4.The Deputy Commissioner of Income Tax,
Corporate Circle -2(1),Chennai -34.

+1cc to Mr.G.Baskar, Advocate, S.R.No.25.

TCA.Nos.626 & 627 of 2017
and CMP.No.15835 of 2017

CP(CO)

rrs 27/02/2019