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 No.808 of 2017

Principal Commissioner of Income Tax 3,
No.63, Race Course Road,
Coimbatore. ...Appellant/ Respondents

-vs-

M/s.Indian Stitches Pvt. Ltd.,
24/64, Asher Nagar, 60 Feet Road,
Gandhi Road, Tirupur-641 603.
PAN: AABCI 1268C ..Respondent/ Appellant

Appeal under Section 260A of the Income-tax Act, 1961, against the order dated 29.06.2017, made in I.T.A.No.1222/Mds/2015 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2009-10against the Order dated 25.02.2019 made in ITA No.547/2014-15 on the file of the Commissioner of Income Tax (Appeals)-3, Coimbatore, and against the Order dated 05.12.2014 made in ITA No.1476/mds/2014, Income Tax Appellate Tribunal 'C' Bench, Chennai and against the Order dated 26.02.2014 made in ITA No.263/11-12,and the Commissioner of Income Tax Appeals -II Coimbatore and against the Order dated 31.12.2011 on the file of the Asst. Commissioner of Income Tax Company Circle, Tirupur made in PA No/GIR No.AABC11286C for the Assessment Year 2009-10.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

: assisted by Ms.K.G.Usharani,
Standing Counsel

For Respondent : No appearance

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

This appeal filed by the Revenue under Section 260A of the Income-tax Act, 1961 is directed against the order dated 29.06.2017, made in I.T.A.No.1222/Mds/2015 on the file of the

Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment year 2009-10.

2.The appeal has been admitted on 06.02.2018, on the following substantial questions of law:-

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in deleting the disallowance of forex derivative loss arising on account of loss on forex derivative transactions by treating it as a trading loss?
>
> (ii) 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
>
> (iii) Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the forex derivative transactions of the assessee have proximity to the export turnover thereby impliedly ruling that the issue is covered by proviso (a) to Section 43(5), when the proviso clearly mandates that to be categorised as hedge, the transactions should only be in respect of goods or merchandise manufactured or traded by the assessee?"

3.Heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel for the appellant.

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 08.08.2019 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 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.

abr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

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

4.The Commissioner of Income Tax Appeals -II,
Coimbatore

5.The Asst. Commissioner of Income Tax
Company Circle, Tirupur

+1cc to Mr.T.R.SenthilKumar, Advocate, SR.No.75119

T.C.A.No.808 of 2017

Kak(11/11/2019)