IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

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THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.1348 to 1350 of 2010

Commissioner of Income Tax
Chennai ... Appellant in all appeals

Vs.

M/s.Sekar Emporium,
22, Arcot Road,
Kodambakkam,
Chennai 24 ... Respondent in all appeals

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dated 31.01.2007 made in ITA Nos.2472/Mds/2004, 2473/Mds/2004, 2474/Mds/2004, against the order of the Commissioner of the Income Tax (Appeals-VIII) , 121, Mahatma Gandhi Road, Chennai-34, dated 08/07/2004 made in ITA Nos.1,2 & 3 2004-05 for the Assessment Year 2000-01, 2001-02, 2002-03 in G.I.No.P.A.No.AAAFS2726F respectively against the order of the Assistant Commissioner of Income -Tax, Circle IV, Chennai-34 dated 05/03/2004, for the Assessment year 2001-01, 2001-02, 2002-03 respectively in PAN/GIR No.AAAFS2726F.

For Appellant : Mr.M.Swaminathan
Senior Standing Counsel
assisted by
Ms.Premalatha

For Respondent : M/s.N.V.Balaji
For Respondent

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

These Tax Case Appeals have been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, dated

31.01.2007 made in ITA Nos.2472/Mds/2004, 2473/Mds/2004, 2474/Mds/2004, by raising the following substantial questions* of law:

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in deleting the addition of Rs.1,14,75,341/- made towards unaccounted stock for the assessment year 2000-01?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the amount of Rs.79,77,526/- and Rs.58,07,319/- relating to additions made on account of additional gross profit earned for the assessment year 2001-02 and 2002-03?
>
> (iii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in deleting the additions especially when Section 69 clearly permits the Department to tax the investment in the form of unaccounted stock which is based on the loose sheets found during the survey?
>
> (iv) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in considering the statements given by the partner of the firm who had admitted that the actual stock available on 31.3.2000 was only Rs.3,23,00,000/- and the books of accounts and the documents impounded during the survey reflect the actual closing stock of the firm?
>
> (v) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering that no estimation of stock was made but additions on stock was made based on the impounded documents found during the survey?
>
> (vi) On the materials found during the survey and the documents impounded and the statements recorded, is the Tribunal right in arriving at the present finding?"

2. When the matter is taken up for hearing, learned Senior Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed

Rs.1,00,00,000/- (Rupees One Crore).

3. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeals filed by the Revenue are dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax (Appeals-VIII)
121, Mahatma Gandhi Road, Chennai-34

3.The Assistant commissioner of Income Tax, Circle IV,
Chennai-34.

+1 cc to M/s.M.Swaminathan, Advocate Sr.No. 325

T.C.(A).No.1348 to 1350 of 2010

RMP(10/12/2020)