IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

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

Tax Case (Appeal) No.644 of 2011

Commissioner of Income Tax-II
Coimbatore ... Appellant / Appellant

Vs.

Shri Madan Mohan Chandak
No.51, Kalaignar Nagar
Karungalpalayam, Erode-638 003
PAN No.AHVPM3762F ... Respondent/ Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 19.05.2011 in ITA No.1256/Mds/2009 as against the order dated 11.06.2009 of the commissioner of Income Tax (Appeals) on ITA.218/08-09,and against the order dated 17.12.2008 of the Commissioner of Income Tax circle I,Erode for the Assessment Year (2003-2004).

For Appellant : Mr.T.R.Senthil Kumar , Sr.Standing Counsel for Ms.K.G.Usha Rani

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'D' Bench, Madras, by raising the following substantial questions of law:

"1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the transaction was to be treated as a transfer within the meaning of Section 47(xiv) and the surplus over the net worth was exempted from income-tax?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that Section 50B read with Section 2(42C) was not applicable to the facts of the case?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assets and liability of the proprietary concern cannot become the assets and liability of the company before succession as per Section 47(xiv)? and

4. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that the transaction was not a sale covered under Section 50B when the assets and liability was transferred as a going concern which was not preceded by succession of business of a proprietary concern by the company as per the conditions imposed u/s.47(xiv)?”

2. When the matter was taken up for hearing, the learned 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 is dismissed as not pressed, keeping open the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

Income Tax Appellate Tribunal
'D' Bench,Chennai.

2.The Commissioner of Income Tax-II
Coimbatore.

3.The Commissioner of Income Tax circle I,Erode

4.Shri Madan Mohan Chandak
No.51, Kalaignar Nagar
Karungalpalayam, Erode-638 003

+1cc to Mr.T.R.Senthil Kumar , Advocate SR.No. 12154

T.C.(A) No.644 of 2011

A.SK(16/03/2020)