IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.7.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.37 of 2013

The Commissioner of Income tax,
Pondicherry. .. Appellant

vs

Shri.V.Venkatesh,
by P.A.Holder Shri.N.Vadivelu,
Propr.M/s.Q Max Tools,
Sidharth Mehta & Co,
No.9, Govindappa Naicken Street,
1st Floor, Chennai 600 00. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 29.8.2012 in in I.T.A.No.963/Mds/2010 as against the order passed by the Commissioner of Income Tax (Appeals)-XII,Chennai in ITA.No.72/09-10 dated 21.03.2020 as against the order passed by the Income Tax Officer,Ward 1(2) Pondicherry in RA.NO./GIR.No.ACUPU538413/5643-V dated of order 14.12.2009 for the Assessment Year 2004-05.

For Appellant : Mr.J.Narayanasamy,
Senior Standing Counsel

For Respondent : Mr.Ashokapathy for
M/s.Pass Associates

ORDER

(Made by Dr.Vineet Kothari,J)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at the respective residences and the counsel, staff of the Court appearing from their respective residences.

2. 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 'C' Bench, Chennai 29.8.2012 in I.T.A.No.963/Mds/2010 for the Assessment Year 2004-2005, by raising the following substantial questions of law:

> " 1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in justified in allowing relief under Section 80IB when the assessee did not discharge the onus of providing the claim on the number of person employed?
>
> 2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in placing the burden of proof on the Assessing Officer and the CIT(A) when the Assessee claimed deduction from his total income based on certain evidences which were doubtful and insuffiicent to satisfy the claim for allowance?
>
> 3) Is not the finding of the Tribunal perverse by placing threatens on the certificate issued three years later and not pertaining to the previous year in question which is contrary to the another certificate issued by the competent authority?
>
> 4) Whether the Tribunal was right in granting deduction u/s. 80IB especially when the Assessing Officer and the CIT (A) had found that there were two sets of salary register filed before them for accommodating more number of employees and for claiming the benefit?"

3. 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 wide

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

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

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssk

To,

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

2.The Commisioner of Income Tax,Pondicherry

3.The Commissioner of Income Tax (Appeals)-XII,
121,Mahathma gandhi Road,Nungambakkam,Chennai.

4.The Income Tax Officer,Ward 1(2) Pondicherry

cp co
A.SK(15/10/2020)