IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.02.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No.207 of 2012

Commissioner of Wealth Tax,
Chennai. ... Appellant/Appellant

Vs.

T.L.Prashanth ... Respondent/Respondent

Appeal preferred under Section 27A of the Wealth Tax Act, 1957, against the order of the Income Tax Appellate Tribunal, Chennai, "D" Bench, dated 25.05.2009 in W.T.A.No.30/Mds/2008 and against the order passed by the Commissioner of Wealth Tax (Appeals)-VI, Chennai-34, dated 07/05/2008 made in WTA.No.3/07-08 and against the order passed by the Assistant Commissioner of Income Tax, Media Circle-I, Chennai-34 GIR.No.PAN.AAGPP6475N dated 06/12/2007 for Assessment year 2004-2005.

For Appellant : Mr.M.Swaminathan, Senior Standing Counsel
For Respondent : Mr.M.P.Senthil Kumar

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in W.T.A.No.30/Mds/2008 for the assessment year 2004-05 on the file of the Income Tax Appellate Tribunal, Chennai "D" Bench, the Department has filed the above appeal.

2.By order dated 25.05.2009, the Income Tax Appellate Tribunal finding that the appeal fell within the monetary limit prescribed by the CBDT, dismissed the appeal following the Board's Circular.

3.The appeal was admitted on the following substantial question of law:

> "Whether on the facts and circumstances of the case, the Tribunal was right in dismissing the appeal

filed by revenue based on low tax effect when the CBDT instructions have specifically excluded cases where there has been an audit objection from the minimum tax effect?”

4.Mr.M.Swaminathan, learned senior standing counsel appearing for the appellant submitted that there was audit objection in the case of the assessee and that the audit objection was also accepted and in such case, the order passed by the Tribunal dismissing the appeal stating that the appeal fell within the monetary limit, should be set aside and the matter should be remitted back to the Tribunal for fresh consideration.

5.Mr.M.P.Senthil Kumar, learned counsel appearing for the respondent - assessee submitted that the stand now taken by the Department in this appeal was not taken before the Income Tax Appellate Tribunal and that the representative of the Department did not produce any supportive documents before the Tribunal to establish that that there was audit objection.

6.It is pertinent to note that even in the grounds of appeal, the Department has raised it as a ground stating that there was audit objection and the same is exempted as per the Board's instruction No.2/2005 dated 24.10.2005 and as such the tax effect being below Rs.2 lakhs would not be a bar to filing of appeal.

7.The learned senior standing counsel appearing for the Department submitted that since the Tribunal has not gone into the merits of the matter, it would be appropriate to remit the matter back to the Tribunal for fresh consideration.

8.Since the case of the assessee, though fell within the monetary limit prescribed by the CBDT, since it also fell within the exceptions carved out in the Board's Circular dated 24.10.2005, we are of the considered view that the order passed by the Tribunal should be set aside and the matter should be remitted back to the Tribunal for fresh consideration. Accordingly, the order dated 25.05.2009 passed by the Income Tax Appellate Tribunal is set aside and the matter is remitted back to the Tribunal for fresh consideration. The respondent - assessee is at liberty to raise all the defences available to him before the Tribunal. The Tribunal is directed to decide the matter afresh, after giving opportunity of hearing to both sides.

9.With these observations, the Tax Case Appeal is allowed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

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To

1.The Income Tax Appellate Tribunal, Chennai, "D" Bench

2.The Commissioner of Wealth Tax, Chennai

3.The Commissioner of Wealth Tax(Appeals)VI, Chennai-34

4.The Assistant Commissioner of Income Tax,
Media Circle-I, Chennai 34

+1 cc to Mr.M.Swaminathan Advocate sr11600
+1 cc to Mr.M.P.Senthilkumar Advocate sr11306

T.C.A.No.207 of 2012

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