IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022
CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.1315 of 2009

The Commissioner of Income Tax,
Coimbatore. ...Appellant

Versus

M/s. Preethi Neuro Hospital,
(Shri Preethi Hospital),
15, Pachaiappa Street,
Opposite to G.H.1st Street,
Erode - 638 009. ...Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "D" Bench, dated 11.01.2008 in I.T(SS)A.No.10/Mds/2005 against the order of the Commissioner of Income Tax (Appeals) II, Coimbatore dated 20.10.2004 made in I.T. Appeal No. 29C/0405 against the order of Assistant Commissioner of Income Tax, Central Circle-IV, Coimbatore dated 22.03.2004 made in PAN/GIR No. AAFFF8164P for the Assessment year 1996-1997 to 2002-2003.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.Subbaraya Aiyar

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 11.01.2008 passed by the Income Tax Appellate Tribunal, Bench 'D', Chennai, in I.T.(SS)A.No.10/Mds/2005, relating to the assessment years 1996-97 to 2002-03.

2.By order dated 30.11.2009, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that, since the assessee in its return of income for the assessment year 2002-02 filed before the date of search as declared the cost of construction, it can be only assessed in regular assessment and not under the block assessment, when the fact regarding undisclosed investment towards the cost of construction came to the light only subsequent to search?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the gifts and credits claimed to have received by the partners of the firm and used for the construction was properly explained, even though the assessee firm could not satisfy the credit worthiness of the lenders?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the surcharge under Section 113 is not leviable on the ground that the search in this case was held prior to 1.6.2002?"

3.When the matter was taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeal 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). It is also submitted that the tax effect in this appeal is less than the threshold limit.

4.In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeal, wherein, the tax effect is said to be less than the monetary limit imposed, is dismissed as withdrawn, keeping open the substantial question of law for determination in an appropriate case. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Income Tax Appellate Tribunal,
Chennai “D” Bench.

2. The Commissioner of Income Tax,
Coimbatore.

3. The Assistant Commissioner of Income Tax
Central Circle-IV, Coimbatore

4. The Commissioner of Income Tax, (Appeals)II, Coimbatore

+1 CC to Mr.M.M. Swaminathan, Advocate sr 2609.

T.C.A.No.1315 of 2009

JPL(CO)
SP(27/01/2022)