C.M.P.No.20699 of 2022 in
T.C..A.No.596 of 2013

S.VAIDYANATHAN,J.
&
MOHAMMED SHAFFIQ,J.

This Miscellaneous Petition has been filed to restore the Tax Case Appeal in T.C.A.No.596 of 2013 which was dismissed on 30.04.2021.

2. When the matter was taken up on 30.04.2021, based on the Circular No.17/2019 dated 08.08.2019 issued by the Central Board of Direct Taxes, the T.C.A.No.596 of 2013 was dismissed as withdrawn on account of Low Tax Effect by leaving the substantial Question of Law framed open. This Court while dismissing the appeal on the basis of litigation policy observed as under:

> *"5.In the light of the said submissions, the above Tax Case Appeal is dismissed as withdrawn on account of the Low Tax Effect. The substantial question of law framed is left open. In the event the tax effect in this case is above the threshold limit fixed in the said Circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs."*

3. It is now submitted that there is audit objection and based on the liberty, the learned counsel for the Revenue seeks to restore the above Appeal in view of clause 10 (c) of the aforesaid circular dated 11.07.2018.

4. For the sake of convenience Clause 10 (c) of the aforesaid circular is extracted hereunder:

> "*10. Adverse Judgments relating to the following issues should be contested on merits notwithstanding that the tax entailed is less than the monetary limits specified in para 3 above or there is no tax effect:*
>
> ....
>
> *(c) Where Revenue Audit Objection in the case has been accepted by the Department , or.*"

5. It is no doubt true that liberty has been granted by this Court to the Revenue to restore the Appeal. However, it is for the Court to decide in respect of restoration of Appeal on file. Even though this Court has given liberty, it is limited to cases where it is above the monetary threshold limit stipulated in the litigation policy. Liberty to reopen is not given in case of

audit objection and hence restoring the Appeal on this ground may not be countenanced by entertaining this Application. In this case, the Revenue in the guise of exercising the liberty wants this Court to review the order of this Court,which is not permissible in law. Hence, we are of the view that it is for the Revenue to file Review Petition, for reviewing the order of this Court if so advised. If any such application is filed the concerned Division Bench will consider and decide the same,on merits and in accordance with law, based on the submissions to be made by the respective parties.

6. In view of the same, this Civil Miscellaneous Petition stands dismissed.

(S.V.N.,J) (M.S.Q.,J)
20.12.2022

arr

S.VAIDYANATHAN,J.
&
MOHAMMED SHAFFIQ,J

arr

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