IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.441 of 2017

Principal Commissioner of Income Tax 4,
No.121, Mahatma Gandhi Road,
Chennai 600 034. ... Appellant

Versus

M/s.Narmada Infrastructure Construction Enterprises Ltd,
Mount Poonammallee Road,
Manapakkam, TCTC Building,
Chennai-600 089.
PAN: AAA CN 3579 L ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, "C" Bench, dated 25.11.2016 in I.TA.No.1559/Mds/2016 against the order of the Commissioner of Income Tax(Appeals)-8, Chennai dated 05.02.2016 and made in ITA.No.11/2006-07,77/2011-2012,18/2007-2008,22/2008-2009,18/2009-2010 and 34/2010-11 for the Assessment Year 2004-2005 to 2008-2009.

against the order of the Assistant Commissioner of Income Tax Company Circle-IV(4), Chennai 34 dated 27.12.2011 and made in PAN/GIR NO.AAA CN 3579 L for the Assessment Year 2004-2005.

For Appellant : Mr.Karthik Ranganathan
Standing Counsel

For Respondent : No appearance

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 25.11.2016 passed by the Income Tax Appellate Tribunal, Bench 'C', Chennai, in I.T.A.No.1559/Mds/2016, relating to the assessment year 2004-05.

2. By order dated 09.08.2017, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"(i) Whether Foreign Exchange loss in respect of loan obtained for purchase of capital asset would be capital loss, even though the capital asset acquired through such loan was not imported into the country from abroad?

(ii) Whether Section 43A of the Income Tax Act, 1961, relating to deduction of foreign exchange loss from the actual cost of the asset, would be attracted in a case where the asset is acquired within the country but by obtaining finance from a foreign bank in foreign exchange?"

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(CS VI)

//True Copy//

Sub Assistant Registrar

psa/av

To

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

2. Principal Commissioner of Income Tax 4,
No.121, Mahatma Gandhi Road,
Chennai 600 034.

3. The Assistant Commissioner of Income Tax
Company Circle IV(4), Chennai 34.

4.The Commissioner of Income Tax (Appeals) - 8, Chennai.

Copy to:
The Section Officer,VR Section,High Court,Madras

T.C.A.No.441 of 2017

sv(CO)
A.SK(04/07/2022)