IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.179 of 2024

The Principal Commissioner of Income Tax-I
Chennai. ... Appellant

Vs.

Shri Parthiban ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 21.10.2022 in I.T.A.No.562 of 2020.

For Appellant : Mr.Avinash Krishnan Ravi
Junior Standing Counsel

J U D G M E N T

(Delivered by R.SURESH KUMAR,J.)

This Tax Case Appeal has been filed by raising the following substantial questions of law:

" *1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in quashing the reopening of assessment proceedings on the ground that there was a change of opinion especially when the AO had not formed any opinion in the first instance?*

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in not considering the fact that treating the sale proceeds of the standing trees purchased along with the land on an out-right basis and had not at all grown or cultivated by the Assessee is to be treated as non-agricultural income as per the provisions of Section 2(1)(A)(b) of the Income Tax Act?

2. At the outset, Mr.Avinash Krishnan Ravi, learned counsel appearing for the appellant / Revenue submits that, though the monetary limit is less than the tax effect as per the recent CBDT's Circular No.9 of 2024 dated 17.09.2024, the exception clauses which are available in Para Nos.3.1 and 3.2 of the earlier Circular in Circular No.5 of 2024 dated 15.03.2024 would *mutatis mutandis* be made applicable to this Circular also. Under Para Nos. 3.1 and 3.2 of the said circular No.5, the circumstances of exceptions are provided, where even low tax effect appeals can be preferred either before the Tribunal or before the High Court or before the Supreme Court.

3. Insofar as this case is concerned, according to the learned counsel for the appellant, there has been an audit objection, based on which alone the assessment order since has been passed, that issue is one of the exception clauses covered under Para 3.1 of the Circular dated 15.03.2024. Therefore, even though it is a case of low tax effect on the quantification of tax, still the Revenue can present the appeal notwithstanding anything contained in Circular

No.9 of 2024 dated 17.09.2024. Hence, the learned counsel for the Revenue seeks admission of this case by taking into consideration the said submission made by him.

4. In order to have a ready reference of Para 3.1 and 3.2 of the Circular No.5 of 2024 dated 15.03.2024, the same is extracted hereunder:

2. In supersession of the above referred communications issued by CBDT, the following may be noted in respect of departmental appeals to be filed before ITATs and HCs and SLPs/ appeals before SC:

3.1 Monetary limits given in paragraph 4 with regard to filing appeal/SLP shall be applicable to all cases including those relating to TDS/TCS under the Act with the following exceptions where the decision to appeal/file SLP shall be taken on merits, without regard to the tax effect and the monetary limits:

a. Where any provision of the Act or the Rules or notification issued thereunder has been held to be constitutionally invalid, or

b. Where any order, notification, instruction or circular of the Board or the Government has been held to be illegal or ultra vires the Act or otherwise constitutionally invalid, or

c. Where the assessment is based on information in respect of any offence alleged to have been committed under any other law received from any of the law enforcement or intelligence agencies such as CBI, ED, DRI, SFIO, NIA, NCB, DGGI, state law enforcement agencies such as State Police, State Vigilance Bureau, State Anti-Corruption Bureau, State Excise Department, State Sales/Commercial Taxes or GST Department, or

d. Where the case is one in which prosecution has been filed by the Department in the relevant case and the trial is pending in any Court or conviction order has been passed and the same has not been compounded, or

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f. Where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under sections 10(23C), 12A/ 12AA/12AB of the Act, order passed u/s 263 of the Act etc. The reference to cases involving sections referred here, where it is not possible to quantify tax effect or tax effect is not involved, is for the purpose of illustration only.

g. Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account, or

h. Cases involving organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries, or

i. Where mandated by a Court's directions, or

j. Writ matters, or

k. Matters related to wealth tax, fringe benefit tax, equalization levy and any matter other than the Income Tax Act, or

l. In respect of litigation arising out of disputes related to TDS/TCS matters in both domestic and International taxation charges:-

i. Where dispute relates to the determination of the nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question, or

ii. Appeals of International taxation charges where the dispute relates to the applicability of the provisions of a Double Taxation Avoidance Agreement or otherwise

m. Any other case or class of cases where in the opinion of the Board it is necessary to contest in the interest of justice or revenue and specified so by a circular issued by Board in this regard.

3.2 Attention is drawn to Circular No. 8/2023 issued vide F.No. 279/Misc./M-93/2018-ITJ(Pt.) dated 31.05.2023 in respect of deferral of appeals u/s 158AB of the Act. Exceptions in such cases operate as follows:

a. When judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' is contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.

b. If the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extent monetary limits, to arrive at judicial finality.

4.1 Appeals/ SLPs, not falling in the exceptions as detailed in para 3 above, shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

5. Many circumstances have been given for filing appeals before the forums like the Tribunal, High Court or Supreme Court, if the monetary limit even though is less than the tax limit as per Circular No.9 of 2024, still appeals can be filed in case of exceptions provided under Para 3.1 or 3.2 of Circular No.5 of 2024 as stated supra.

6. However, on a careful perusal of Paras 3.1 and 3.2 of the Circular, we do not find any circumstance to show that audit objection is one of such circumstance under which there is an exception where appeals can be filed even under low tax effect for pursuing the matter before the appellate forum including this Court.

7. No such circumstance as mentioned in Paras 3.1 and 3.2 of Circular No.5 of 2024 dated 15.03.2024 is available in this case. Similar to the said circular, Para 10 of Circular No.3 of 2018 dated 11.07.2018 reads as follows:

> *"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in Para 3 above or there is no tax effect:*
> *(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or*
> *(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or*

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets / bank accounts."

8. Though Circular No.3 dated 11.07.2018 has been superseded by Circular No.5 dated 15.03.2024, since similar exceptions have been provided in Circular No.5 dated 15.03.2024 in Paras 3.1 and 3.2, which we have extracted herein above, where also there is no such exception, such as audit objection, provided, and therefore the contention of the learned counsel for the appellant has to be rejected.

9. We do not find any merits in the contentions made by the learned Standing Counsel for the Revenue to entertain this appeal as admittedly it comes under the low tax effect as per the recent Circular No.9 dated 17.09.2024. In that view of the matter, we are not inclined to entertain this appeal. Hence it is dismissed as it comes under low tax effect and the questions of law that have been framed in this appeal by the Revenue / Appellant would be decided at a later point of time in an appropriate case. No costs.

(R.S.K.,J.) (C.S.N.,J.)
12.11.2024

NCS : Yes/No
Index : Yes/No
KST

R.SURESH KUMAR, J.

AND
C.SARAVANAN, J.

KST

To

The Income Tax Appellate Tribunal
'A' Bench, Chennai.

T.C.A.No.179 of 2024

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