

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.01.2015

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH**

T.C.A. NO. 1047 OF 2014

The Commissioner of Income Tax
Chennai.

.. Appellant

- Vs -

M/s. Shri Shanthinath Benefit Fund Ltd.
234, Kamarajar Salai
Villupuram 605 602.

.. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 15.12.2011 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, made in ITA No.501/Mds/2011.

For Appellant : Mr.T.Ravikumar

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Income Tax Appellate Tribunal in dismissing the appeal filed by it, the Revenue is before this Court by filing the present appeal, raising the following questions of law :-

"1) Whether it is proper for the Tribunal to dismiss the appeal of the department without going into the merits of the case on the ground of low monetary limit especially when there was a revenue audit objection?

2) Whether it is proper for the Tribunal to dismiss the appeal of the

department on the ground that CBDT Circular No.3 of 2011 dated 9.2.2011 in paragraph 8 clearly mention the exception which was not considered while dismissing the appeal?

3) Whether the sitting fee amount of Rs.2,52,000/= being the excess remuneration paid to the Director over and above the limits prescribed under the Companies Act are allowable?

4) Whether as per Section 198 r/w 309 and Schedule XIII of the Companies Act which prescribes limit for paying remuneration by way of salary is to be followed or assessee is entitled to more than the limits prescribed therein?

5) Whether in Schedule XIII of the Companies Act, the remuneration has been defined would include the Director's sitting fee also?"

2. The assessee, in the course of normal business, filed return of income on 24.11.03, which was processed under Section 143 (1) of the Income Tax Act on 6.12.03. A notice was issued under Section 143 (2) of the Act on 15.2.06 to which the assessee filed its response. The assessment was completed and the Assessing Officer found that during the year ending 31.3.05, the company had paid excess payment towards remuneration. Therefore, the Assessing Officer held that according to Schedule XIII of the Companies Act, remuneration would include any other allowance and, therefore, would cover sitting fees as well and, therefore, while allowing the amount, the same was added as income by the Assessing Officer.

3. Aggrieved against the said order of the Assessing Officer, the assessee/respondent filed appeal before the CIT (Appeals), who allowed the appeal of the assessee and deleted the addition of Rs.2,52,000/= made by the Assessing Officer.

4. The Revenue, aggrieved by the order of the CIT (Appeals), dated 7.1.11, on the reopening done for the assessment year in question, i.e., 2003-2004, by which the CIT (Appeals) held that the addition is not valid and, thereby deleted the addition of Rs.2,52,000/= made by the Assessing Officer by disallowing the claim of remuneration paid to the Directors,

filed appeal before the Tribunal. The Tribunal, in para 2 of its order, has categorically held that even if the reopening is held to be valid, the addition effected by the Assessing Officer is only Rs.2,52,000/=, which is much less than Rs.3 Lakhs and the tax component is well below Rs.2 Lakhs and, placing reliance upon CBDT Circular No.3 of 2008 dated 9.2.11, held that the appeal is not maintainable. For better clarity, para-2 of the order passed by the Tribunal, is extracted hereinbelow :-

“2. It is clear from the grounds itself that even if the reopening is held to be valid, the addition effected by the A.O. being only Rs.2,52,000/= the tax effect is much less than Rs.3 Lakhs and even well below Rs.2 Lakhs. Therefore, in view of CBDT Circular No.3 of 2008 dated 9.2.2011, the appeal is not maintainable.”

Aggrieved by the said order of the Tribunal, the Revenue is before this Court by filing the present appeal.

5. It is the primary contention of Mr.Ravikumar, learned standing counsel appearing for the appellant/Revenue that the case will fall under sub-clause (c) of clause 8 of the CBDT Circular 3/2011 dated 9.2.2011. For better appreciation, sub-clause (c) of clause 8 of the CBDT Circular 3/2011 dated 9.2.2011, is extracted hereunder :-

“8. 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 are 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.”

6. It is the contention of Mr.Ravikumar that there being a Revenue Audit Objection

insofar as the particular transaction is concerned, the same would fall well within sub-clause (c) of clause 8 of the CBDT Circular 3/2011 dated 9.2.2011. However, we find that there is no document relating to Revenue Audit Objection available in the typed set of documents filed along with this appeal. It is also evident from the order passed by the Tribunal that there is no reference to any document filed by the Department, before the Tribunal, insofar as Revenue Audit Objection in relation to the said transaction is concerned. In such view of the matter, this Court is in agreement with the view taken by the Tribunal that CBDT Circular 3/2011 dated 9.2.2011 will come into play and, therefore, the dismissal of the appeal is entirely justified. No question of law, much less substantial questions of law arise for consideration in this appeal.

7. For the reasons aforesaid, finding no infirmity with the order passed by the Tribunal warranting interference, this appeal fails and the same is dismissed.

(R.S.J.) (R.K.J.)
07.01.2015

Index : Yes/No
Internet : Yes/No
GLN

To

1. The Commissioner of Income Tax
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