IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8205-8214 OF 2009

M/S. S.C. NAREGAL — Appellant(s)

VERSUS

THE COMMISSIONER OF INCOME TAX, HUBLI & ANR. — Respondent(s)

O R D E R

Heard learned counsel for the parties.

These appeals take exception to the judgment dated 23.09.2008 passed by the High Court of Karnataka, Circuit Bench at Dharwad in ITA Nos. 362-370 of 2004 and ITA No. 372 of 2004 pertaining to relevant assessment years.

The issue before the High Court was whether the Instruction Order No. 5/2008 dated 15.05.2008 could be availed by the appellant(s), providing for disposal of the appeal(s) filed by the respondent involving low tax effect. The High Court has gone by Clauses 8 and 11 of the said Instruction. Indeed, Clause 11 of the Instruction does mention that where the appeals have been filed on or before 15.05.2008, will be governed by the instructions on this subject, operative at the time when such appeal was filed.

Similar question came up for consideration before this Court in Director of Income Tax, Circle 26(1), New Delhi vs. S.R.M.B. Dairy Farming (P) Ltd., reported in (2018) 13 SCC 239. This Court after considering the decisions of different High Courts, including the Supreme Court decision on the question involved, namely, Commissioner of Income Tax Vs. Surya Herbal Ltd. reported in (2011) 15 SCC 482 answered the question in favour of assessee in the following words:

> **"23. We are of the view that the matter needs to be put to rest and a clarity be obtained in view of the impact of this issue on pending cases before the High Courts as well as the cases which have been disposed of by various High Courts by applying the Circular of 2011 to pending litigations. In our view the matter has been squarely put to rest taking further care of the interest of the Revenue by the order passed by the three-Judge Bench of this Court in Surya Herbal Ltd. Case, which had put two caveats even to the retrospective application of the Circular. The subsequent orders have been passed by the two-Judge Bench without those orders being brought to the notice of the Court, a duty which was cast on the Department to have done so to avail the ambiguity which has arisen. Thus, the said view of the three-Judge Bench would hold water and the Circular would apply even to pending matters but subject to the two caveats provided in Surya Herbal Ltd. case."**

The same interpretation must apply to the instructions under consideration. In the present case, there is no possibility of cascading effect nor the issue is involved in group of matters, as such. Therefore, the appeals are allowed.

As a result, the impugned judgment is set aside and the appeals filed by the respondent before the High Court be treated as dismissed in terms of this order because of low tax effect, leaving questions of law open.

Pending applications, if any, stand disposed of.

…..................J
(A.M. KHANWILKAR)

…..................J
(DINESH MAHESHWARI)

New Delhi
October 23, 2019

ITEM NO.104 COURT NO.8 SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8205-8214/2009

M/S. S.C. NAREGAL Appellant(s)

VERSUS

THE COMMISSIONER OF INCOME TAX, HUBLI & ANR. Respondent(s)

([AT TOP])

Date : 23-10-2019 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)
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Mr. Baroona Gautam, Adv.
Mr. Arjun Garg, Adv.
Mr. Amit Verma, Adv.
Mr. Adit Khorana, Adv.
Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH) (VIDYA NEGI)
COURT MASTER (SH) COURT MASTER (NSH)
[Signed order is placed on the file]