IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2016

CORAM :

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Tax Case Appeal No. 671 of 2007

The Commissioner of Income Tax
Salem .. Appellant / Appellant

Vs.

M.s Ideal Garden Complex Pvt. Ltd.,
7/54, Junction Road
Salem. ..Respondent/ Respondent

Prayer: This Memorandum of Appeal is filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 16.12.2005 passed in W.T.A. 82/Mds/2004.

For Appellant : Mr. J. Narayanaswamy
Senior Standing Counsel for I.T

For Respondent : Mr. P.J. Rishikesh

J U D G M E N T

(Judgment of the Court was made by **S.Manikumar,J)**

Instant Appeal is filed by the Revenue against the order in W.T.A. 82/Mds/2004 dated 16.12.2005, for the assessment year 1998-99.

2. Short facts leading to the appeal are that the respondent/ assessee is a Private Limited company, registered under the Companies Act. The main object of the assessee is to carry on the business of real estate, building contractors, flat promoters, to take on lease, hire or otherwise acquire and deal in any movable and immovable property and to develop them. Whileso, an order under Section 35 of the Wealth Tax Act was passed, whereby liability to an extent of Rs.63,26,145/- was restricted to the value of the building and an excess of Rs.17,30,411/- was disallowed. Aggrieved by the same, appeals were filed before the Commissioner of Wealth Tax (Appeals), who decided the issue in favour of the assessee and against the department. The Revenue filed further appeal before the Income Tax Tribunal, which was also dismissed, on the ground that the same was not maintainable, since the tax effect was less than Rs.1.00 lakh and as per CBDT Circular No. 1979 dated 27.03.2000. Seeking for an answer on the following substantial questions of law,

this Tax Appeal has been filed.

(a) W*hether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not deciding the issue on merits?*

(b) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in following Circular No.1979 dated 27.03.2000 issued by CBDT and dismissing the appeal ?

(c) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not considering the issues raised by the department namely, the excess liability to an extent of Rs.17,30,411/- which was allowed by mistake and rectified under Section 35 of the Wealth Tax Act ?

3. On this day, when the matter came up for hearing, inviting attention of this Court to the general ground (b), Mr. J. Narayanaswamy, learned Senior Standing Counsel for Income Tax Department, submitted that the Tribunal missed to note that wealth tax assessments are consequential to revenue audit objections raised and in such circumstances, the Tribunal ought not to have dismissed the appeal in W.T.A. 82/Mds/2004.

4. Per contra, inviting the attention of this Court to the order dated 16.12.2005 in W.T.A. 82/Mds/2004, of the Income Tax Appellate Tribunal, Mr. P.J. Rishikesh, learned counsel appearing for the respondent submitted that even before the Tribunal, the Revenue was not able to substantiate any exceptional circumstances provided in CBDT Circular No. 1979 dated 27.03.2000, whereas, the issue of audit objection is being raised for the first time before this Court.

5. Heard learned counsel for the parties and perused the material available on records.

6. Before adverting to the rival contentions, this Court deems it fit to extract below, the CBDT Circular No. 1979 dated 27.03.2000 :-

> *" Board's Instruction No. 1979 - "F. No. 279/126/98-ITJ dated the 27th March, 2000 read as*
>
> *Subject : Revising monetary limits for filing Departmental appeals/ references before Income-tax Appellate Tribunal, High Courts and Supreme Courts – Measures for reducing litigation – Regarding.*

Reference is invited to the Board's Instruction No. 1903, dated 28th October, 1992, and Instruction No.1777, dated 4th November 1987, wherein monetary limits of Rs.25,000 for Departmental appeals (in income-tax matters) before the Appellate Tribunal, Rs.50,000/- for filing reference to the High Court and Rs.1,50,000 for filing appeal to the Supreme Court were laid down.

2. In supersession of the above instruction, it has now been decided by the Board that appeals will be filed only in cases where the tax effect exceeds the revised monetary limits given hereunder :

		(Tax effect) Rs.
(i)	Appeal before the Appellate Tribunal (in income-tax matters)	1,00,000
(ii)	Appeal under Section 260A/ reference under Section 256(2) before the High Court	2,00,000
(iii)	Appeal in the Supreme Court	5,00,000

The new monetary limits would apply with reference to each case taken singly. In other words, in group cases, each case should individually satisfy the new monetary limits. The working out of monetary limits will therefore not take into consideration the

cumulative revenue effect as envisaged in the Board's earlier instruction referred to above.

3. Adverse judgments relating to the following should be contested irrespective of revenue effect :

(i) Where Revenue audit objection in the case has been accepted by the Department.

(ii) Where the Board's order, notification, instruction or circular is the subject matter of an adverse order.

(iii) Where prosecution proceedings are contemplated against the assessee.

(iv) Where the constitutional validity of the provisions of the Act are under challenge.

4. Special leave petitions under Article 136 of the Constitution are filed before the Supreme Court only in consultation with the Ministry of Law. Therefore, where the Chief Commissioner decides to contest an adverse judgment by filing special leave petition before the Supreme Court, they should send the proposal to the Board for further processing.

5. These instructions will apply to litigation under other direct taxes also, e.g., wealth-tax, gift-tax, estate duty, etc.

6. These monetary limits will not apply to writ matters.

7. This instruction will come into effect from April 1, 2000. "

The Tribunal has applied the circular and passed orders in W.T.A. 82/Mds/2004 dated 16.12.2005, which is extracted hereunder :-

" This appeal of the Revenue relates to Assessment Year 1998-99.

2. We heard the learned Departmental Representative (D.R) and the learned representative for the assessee. Admittedly, the tax effect in this Revenue's appeal is less than Rs.1,00,000/-. The CBDT in their circular No.1979 dated 27.3.2000 prescribed the monetary limit to Rs.1,00,000/- for filing the appeal before this Tribunal. No exceptional circumstances as provided in the above said circular was pointed out by the learned D.R. for filing this appeal before this Tribunal. The circular of the CBDT binds on the Department. Therefore, the appeal ought not to have been filed before this Tribunal. Moreover, for the Assessment Years 1997-98 and 1998-99 (original assessment) in the assessee's own case, this Tribunal, in W.T.A Nos. 95 & 96/Mds/03, rejected the Department's appeal on the basis of the above CBDT circular. The learned counsel for the

assessee has submitted a copy of the order of this Tribunal dated 18.8.2005.

3. In view of the above circular of the CBDT and the order of the co-ordinate Bench of this Tribunal in the assessee's own case, the appeal filed by the Revenue is not maintainable. Accordingly, the same is dismissed. However, there will be no order as to cost. "

7. As rightly pointed out by Mr. P.J. Rishikesh, learned counsel for the respondent, during the course of arguments of Revenue, the Tribunal wanted the Revenue to ascertain as to whether the case of the assessee falls within the exceptional circumstances provided for, in the Circular No. 1979 dated 27.03.2000, extracted supra. Having found that the case of the assessee does not fall under any of the above said circumstances, as provided for in the circular, the Tribunal has ordered as hereunder :-

" No exceptional circumstances as provided in the above said circular was pointed out by the learned D.R. for filing this appeal before this Tribunal. "

8. Though in the instant appeal, Revenue has assailed the correctness of the order of the Tribunal, *inter alia* on the grounds that

the Tribunal has missed to note that the Revenue has raised the special circumstances, referred to, in paragraph 3 of the Circular applicable to the facts of the present case, no material has been placed before this Court to substantiate the same. That apart, Revenue has raised the said ground for the first time before this Court, which is also not substantiated.

9. In the light of the above discussion, accepting the contention of the respondent/ assessee, all the substantial questions of law have to be answered against the Revenue and accordingly the Tax Case (Appeal) is dismissed. No order as to costs.

(S.M.K.,J) (D.K.K.,J)
06.07.2016

Index: Yes/No
Internet: Yes/ No

avr

To
The Commissioner of Income Tax-I
Salem.

S.MANIKUMAR,J

A N D

D.KRISHNAKUMAR,J

avr

T C A No.671 of 2009

06.07.2016