

(2010) 02 MAD CK 0198

In the Madras High Court

Case No : Tax Case (Appeal) No's. 920 to 923 of 2004

Commissioner of Income Tax

APPELLANT

Vs

Eapen Nainan

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2011) 338 ITR 263

Hon'ble Judges : P.P.S. Janarthana Raja, J;D. Murugesan, J

Bench : Division Bench

Advocate : J. Naresh Kumar, for the Appellant;

Final Decision : Allowed

Judgement

D. Murugesan, J.—All these appeals were admitted on the following substantial questions of law :

1. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in dismissing the appeal of the Revenue merely on the ground that the tax effect was less than the minimum specified in the Board's instruction without going into the merits of the case ?

2. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in holding that the monetary limits specified in Board's Instruction No. 1979, dated March 27, 2000, was applicable without considering subsequent the instruction of the Board dated June 29, 2000, prescribing that the tax effect has to be considered taking into account all the assessment years for which the appeals are being filed at one point of time ?

2. The income tax Appellate Tribunal dismissed the appeals preferred by the appellant-Revenue by placing reliance on Instruction No. 1979, dated March 27, 2000, wherein the monetary value for filing the appeal to the Tribunal was fixed at Rs. 1 lakh.

3. It is brought to our notice that the Central Board of Direct Taxes (CBDT) while

giving a clarification in respect of Instruction No. 1979, dated March 27, 2000, issued certain guidelines in F. No. 279/126/98-ITJ, dated June 29, 2000, as under :

1. The monetary limits in the context of "each case taken singly" would mean each assessment year for each assessee considered at one point of time. For example, if filing of appeals were to be considered in the case of XYZ Ltd. for the assessment year 1995-96 and 1996-97, the monetary limit as prescribed in Instruction No. 1979 would apply taking together the assessment years 1995-96 and 1996-97.

2. Even if the issues involved in an appeal under consideration are already pending in appeal before the appellate authorities all subsequent appeals will now be filed for particular assessment year only as indicated in (i) above, if the tax effect exceeds the prescribed monetary limit.

3. In para. 3(iii) of the Instruction it has been sated that the adverse judgments should be contested irrespective of the revenue effect in a case where prosecution proceedings are contemplated against any assessee. However, it is possible that the prosecution proceeding may be contemplated against any assessee on points different from the issues disputed in appeal. For example, case under consideration may relate to the assessment order u/s 143(3) whereas the prosecution proceedings may have been initiated on other point like TDS. It is clarified that the adverse judgment should be contested only if the prosecution proceedings contemplated relates to point under appeal and not on points unrelated to the issues in appeal.

4. This may be brought to the notice of all the officers working under your charge.

4. Mr. J. Naresh Kumar, learned counsel for the appellant, has submitted that in the wake of the said clarification when the appeals are disposed of in respect of all the assessment years by common order, they can be clubbed together, for the purpose or monetary value and, if that be so, the tax effect is more than rupees one lakh in respect of all these cases and, hence, the Tribunal was not correct in dismissing the appeals solely by placing reliance on Instruction No. 1979, dated March 27, 2000.

5. The respondent has been served in all the appeals, but none appears. His name is also printed in the cause list.

6. We have considered the submission of Mr. Naresh Kumar and also perused the clarification issued by the Central Board of Direct Taxes dated June 29, 2000, and particularly point No. 1 which we have extracted above. By the said clarification, the Revenue is entitled to club all the assessment years for the purpose of tax effect in the event the Commissioner of income tax (Appeals) disposes of all the appeals by a common order.

7. Factually in this case, the Commissioner of income tax (Appeals) have been disposed of concerning the assessment years 1995-96, 1996-97, 1997-98 and

1998-99. If the tax effect in all the four appeals is taken together, the monetary value crosses the tax effect of more than rupees one lakh, in which event the appeals are maintainable. As the Tribunal has rejected all the appeals only on the said ground, we set aside the order impugned and remit all the appeals to the Tribunal for fresh consideration on the merits without reference to the tax effect, i.e., monetary value.

8. The appeals are allowed. No costs.