(2008) 07 MAD CK 0001

In the Madras High Court

Case No : Tax Case Appeal No''s. 663 to 665 of 2008

Commissioner of Income Tax APPELLANT

Vs

Excel Finance RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Citation : (2010) 326 ITR 537

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue aggrieved by the order of the Tribunal dated April 1, 2005, passed in I. T. A. Nos. 1185, 1186 and

1187/Mds/2003 for the assessment years 1993-94, 1994-95 and 1995-96 filed the present appeals by framing the following substantial question

of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in dismissing the appeal filed by the

Revenue without going into the merits of the case on the ground that the tax effect was less than the monetary limit of Rs. 1,00,000 prescribed by

the Central Board of Direct Taxes in Instruction No. 1979, dated March 27, 2000, for filing appeals before the Income Tax Appellate Tribunal

without considering the subsequent Instruction No. 1985, dated September 26, 2000, and without considering the judicial pronouncements of the

various High Courts including that of the jurisdictional High Court wherein it has been held that the Board''s Instructions regarding monetary limits do not operate as an embargo on considering the appeals on the merits ?

2. The assessments of the assessee for the assessment years 1993-94,1994-95 and 1995-96 were completed by the Assessing Officer making

several additions including the difference in the closing balance of the deposits between the amount shown in the balance-sheet and the return of

income and statements filed subsequently and addition towards interest in respect of M/s. Sri Venkateswara Poultry Farm which was offered only

partly by the assessee. Aggrieved by the additions, the assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals),

who having satisfied, deleted the addition due to the difference between the balance-sheet figure and the figure given in the statement

accompanying the return. As far as the interest not fully shown, the Commissioner of Income Tax (Appeals) gave partial relief on the basis of the

assessment of M/s. Sri Venkatesvara Poultry Farm. Aggrieved by the orders of the Commissioner (Appeals), the Revenue filed appeals before the

Income Tax Appellate Tribunal. The Tribunal accepted the contention of the assessee that the tax effect in the appeals for all the three years was

below Rs. 1,00,000 and, therefore, as per the Board''s Circular dated March 27, 2000, no appeal was to be filed before the Tribunal by placing

reliance of the decision of this Court in the case of reported in Commissioner of Wealth-tax Vs. S. Annamalai, and dismissed the appeals in limine

on the ground that the tax effect is less than Rs. 1,00,000 and it does not also fall within the exceptions provided for filing appeal before the

Tribunal even where the tax effect is less than Rs. 1,00,000. The correctness of the said order is now canvassed before this Court by framing the

above stated question of law.

3. Heard the learned Counsel for the Revenue and perused the order of the Tribunal.

4. An issue similar to the issue in this case came up for consideration before a Division Bench of this Court in the case of Commissioner of Wealth-

tax Vs. S. Annamalai, wherein it was held that in order to reduce the litigation for filing Departmental appeals/references before the Income Tax

Appellate Tribunal, High Courts and the Supreme Court, the Central Board of Direct Taxes, by Circular F. No. 279/126/98-IT, dated March 27,

2000, revised the monetary limits. However, the following should be contested irrespective of the Revenue effect : (i) where the 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, and (iv) where the constitutional validity of the

provisions of the Act are under challenge.

5. The Revenue has not made out any case to show that the case falls within the four exceptions provided in the circular of the Central Board of

Direct Taxes in F. No. 279/126/98-IT, dated March 27, 2000. Hence, the appeals deserve to be dismissed as there is no question of law arising

out of the order of the Tribunal. The Tribunal''s order requires no interference, for the foregoing reasons. The appeals are dismissed. No costs.