

(2009) 04 MAD CK 0354

In the Madras High Court

Case No : Tax Case (Appeals) No's. 258 and 259 of 2005

Commissioner of Income Tax-I

APPELLANT

Vs

S. Sumathi

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Income Tax Act, 1961 — Section 119, 148, 260A

Citation : (2009) 317 ITR 422

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Naresh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These appeals are at the instance of the revenue filed against the order of the Income Tax Appellate Tribunal,

Madras "D" Bench, dated 13.02.2004 made in M.P. No. 156(Mds)/2003 in ITAs Nos. 369 & 370/Mds/2000 for the assessment years 1994-

95 and 1995-96.

2. The facts of this case are as follows : The assessee filed returns for the assessment years 1994-95 and 1995-96 admitting a total loss of Rs.

44,650/- and Rs. 84,531/-. A notice u/s 148 of the Income Tax Act was issued and after hearing the assessee, the assessing officer arrived at the

tax due at Rs. 960/- and Rs. 300/- respectively. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the

Commissioner of Income Tax (Appeals), who allowed the appeal filed by the assessee. Aggrieved against the order, the revenue carried the matter

on appeal to the Income Tax Appellate Tribunal. Without going into the merits of the case, the Tribunal dismissed the departmental appeal in limine

on the ground that the tax effect is less than Rs. 1.00 lakh by following the decisions in the case of Commissioner of Income Tax Vs. Camco

Colour Co., and Commissioner of Wealth-tax Vs. S. Annamalai, . The revenue filed a miscellaneous petition to review that order of the Tribunal

contending that the decisions relied on by the Tribunal were rendered in the context of appeals actually filed subsequent to the issue of Instruction

No. 1979. In those two cases, the Courts noticed that when the prescribed limit was Rs. 2.00 lakhs for filing appeals to the High Court in tax

effect, these appeals involving lower tax effects were filed in disregard to the government instruction. Subsequent increase in limits for filing appeals

will not affect appeals which were correctly filed and have been pending for a long time. The said contention of the revenue was rejected by the

Tribunal and the miscellaneous petition was dismissed. The correctness of the same is put in issue in these appeals.

3. The appeal was 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 rejecting the Revenue's application

for rectification of its appellate order for the assessment year 1994-95 (in respect of T.C. No. 258 of 2005) 1995-96 (in respect of T.C. No. 259

of 2005) in the assessee's case wherein the Tribunal has summarily dismissed the Revenue's appeal on the ground that the monetary limit was less

than Rs. 1,00,000/- whereas at the time of filing appeal on 03.03.2000 the monetary limit was only Rs. 25,000/- as per the instruction No. 1777

of the Board dated 04.11.1987?

2. Whether, on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in holding that allowing the

revenue's miscellaneous petitions would amount to review of its own order when the Instruction No. 1979 dated 27.03.2000 itself clearly

specified that it was applicable only to appeals filed on or after 01.04.2000 and therefore, there was a mistake apparent from record in the

Tribunal's order which had to be rectified?

4. Heard the learned Counsel for the revenue and perused the order of the Tribunal.

5. 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, refixed the monetary limits, however, casting out certain exceptions. The exceptions stated are (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, and (iv) where the constitutional validity of the provisions of the Act are

under challenge.

6. The Revenue had not made out a case that the issue involved in the appeal before the Tribunal falls within the exceptions provided in the

circular.

7. It may be noted that this Court considered a similar issue in the case of Commissioner of Income Tax Vs. Associated Electrical Agencies, ,

wherein this Court held as follows:

We are of the considered view that none of the exceptions stated in the circular are applicable to the facts of the present case. The circular was

stated to be issued by invoking the statutory power u/s 119 of the Income Tax Act. The appeal is filed u/s 260-A of the Income Tax Act. It is well

settled principle of law that each and every provision of a statute has to be given the same importance. One provision cannot be alleviated to a

higher pedestal than the other provision, of course, unless or otherwise specifically stated either in the scheme, the Act or in the provision itself that

a particular provision is subjected to or qualified by any other provision or the provision can be given effect to notwithstanding anything contained

in any other provisions by assigning overriding effect. Hence, the contention that notwithstanding the circular, which was issued u/s 119 of the

Income Tax Act, the appeal could be filed by the revenue u/s 260-A has to be rejected for the reason that if the contention is accepted, one of the

Section would become virtually otiose and that cannot be the intention of the law makers.

Thus, following the long line of case laws reported in Commissioner of Income Tax Vs. Rajasthan Patrika Ltd., , Commissioner of Income Tax Vs.

P.S.T.S. Thiruvirathnam and Sons, , to which one of us is a party (K. Raviraja Pandian, J.), Commissioner of Income Tax Vs. Digvijay Singh, and

Commissioner of Income Tax Vs. Camco Colour Co., , this Court held that the uniform line of judicial opinion is that if the tax effect is less than

what is stated in the circular, the Revenue need not agitate the issue on appeal and that the circular is binding on the Revenue.

The said judgment of this Court in the case of Associated Electrical Agencies Commissioner of Income Tax Vs. Associated Electrical Agencies,

has been relied by the Gujarat High Court in the case of CIT v. Concord Pharmaceuticals (2008) 220 CTR 117 to reject the appeal of the

revenue where the tax effect is less than Rs. 2.00 lakhs. The apex Court in the case of State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd.

and Another, has laid down that the circular issued by the CBDT is much binding on the revenue and that requires no support of judicial precedent.

8. Admittedly, the tax effect in these cases is less than Rs. 2.00 lakhs, the limit prescribed under the above said Circular dated 27.03.2000. The

appeals are filed on 19.05.2005. Hence, the circular is binding on the revenue. The appeals are dismissed. No costs.