

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2010

CORAM:

THE HONOURABLE Mr. JUSTICE D.MURUGESAN

and

THE HONOURABLE Mr. JUSTICE P.P.S.JANARTHANA RAJA

TAX CASE (APPEAL) No.799 of 2004

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The Commissioner of Income-tax,  
Coimbatore.

.. Appellant.

/versus/

M/s. Self Savings Scheme  
(Chit Fund) P. Ltd.,  
49, Commercial Road,  
Ootacamund.

.. Respondent.

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal 'B' Bench, Chennai, dated 08.01.2004 passed in M.P.No.259/Mds/2003 against I.T.A.No.1969/ Mds/1995.

For appellant : Mr.K.Subramaniam

For respondent : Mr.B.Ravindran

(JUDGMENT OF THE COURT WAS DELIVERED BY D.MURUGESAN,J.)

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The Tax Case appeal at the instance of the Revenue, 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 law, in dismissing the department's appeal on the reasoning that the tax effect is below Rs.1 lakh, even though the circular dated 27.3.2000 specifically says that it is effective from 1.4.2000?

2. Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in dismissing the appeal, even though the appeal filed in this case in the year 1995 and is covered by the circular dated 28.10.1992 wherein the monetary limit is only Rs.25,000/-?"

2. The respondent/ assessee filed the return of income admitting a total income of Rs.18,38,430/-. The return was processed under Section 143(1)(a) of the Income Tax Act and intimation was sent. After discussion with the assessee's representative and scrutinising the details filed in the course of the hearing, the Assessing Officer determined the total taxable turnover as Rs.21,95,970/-. That order was carried on appeal before the Commissioner of Income Tax (Appeals), which was ultimately, partly allowed directing the assessee to get total reduction of Rs.2,12,984/-. That order was carried on appeal by the Revenue before the Income Tax Appellate Tribunal, Chennai, in I.T.A.No.1969/Mds/1995. That appeal was filed on 28.3.1995. It was dismissed on the ground that the tax effect involved in regard to the claimant was less than Rs.1,00,000/-. The Tribunal relied upon a decision of this Court in C.W.T. v. S. ANNAMALAI (2002 (258) I.T.R.,675). The Revenue filed a Miscellaneous Application before the Tribunal seeking for restoration of the appeal and dispose of the same on merits. The primary contention of the Revenue before the Tribunal was that on the date when the appeal was filed before the commissioner of Income-tax (appeals) the monetary limit was prescribed only Rs.25,000/- as tax effect as per instruction No.177 dated 4.11.1987. Hence the appeal was maintainable and reliance placed upon by the Tribunal on a subsequent Instruction No.197 dated 27.3.2000, prescribing the minimum of Rs.1,00,000/- as tax effect for preferring appeal was not justified. However, miscellaneous application was dismissed on the ground that it was an arguable one.

3. This order passed in Miscellaneous Application is questioned in this appeal.

4. We have heard Mr.J.Naresh Kumar, learned counsel appearing for the appellant and Mr.B.Ravindran, learned counsel for the respondent. According to learned counsel for the Revenue/ appellant, application of subsequent circular dated 23.7.2000 to dismiss the appeal which was filed in accordance with the Circular dated 4.11.1987, is bad in law. In our opinion, the said argument cannot be allowed to be canvassed at this stage as has been held by the Supreme Court in T.S.BALARAM, I.T.O. v. VOLKART BROTHERS (S.C.) [82 (1971) I.T.R.,50]. The Tribunal initially dismissed the appeal on the ground that the tax effect was less than Rs.1,00,000/- by order dated 14.5.2003 and that order was passed following the decision of this Court in C.W.T. v. S.ANNAMALAI [258 (2002) ITR, 675]. Subsequent application was dismissed as not maintainable as it was an arguable point. In all probability, the Revenue should have questioned the order dated 14.5.2003 which it had failed and it had questioned the order passed in Miscellaneous Application which was dismissed on the ground that the issue was an arguable one and not on merits. With reference to the subsequent instruction, whether it could be made applicable to the appeal, we may mention that an appeal is filed and the same is pending. Even substantial questions of law raised in this appeal relate to the

order in the Miscellaneous Application in respect of the finding of the Tribunal wherein it has been found that the issue was arguable one.

5. In that view of the matter, we find no merit in this appeal and the same is rejected. No costs. We make it clear that we are not expressing any opinion as to the applicability of the Circular either prospectively or retrospectively in this appeal as it is not the issue raised in this appeal.