

(2009) 04 MAD CK 0499

Madras High Court

Case No: Tax Case (Appeal) No's. 1032, 1033 and 1034 of 2008

Commissioner of Income Tax

APPELLANT

Vs

Nagaraja Rao, S. Dwarakanath
and S. Namagiri

RESPONDENT

Date of Decision: April 27, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 119, 143(3), 260A

Citation: (2009) 318 ITR 422

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

Bench: Division Bench

Advocate: J. Nareshkumar, for the Appellant; V.S. Jayakumar, for the Respondent

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 September 22, 2004, in I. T. A. Nos. 615, 619 and 620/Mds/97.

2. The facts of this case are as follows : The assessment of the assessee for the assessment year 1991-92 was completed u/s 143(3) of the Income Tax Act, 1961, on March 31, 1994, on a total income of Rs. 1,71,110, Rs. 1,79,570 and Rs. 3,36,390. While completing the assessment, the Assessing Officer found that the assessee had claimed the sale proceeds of silver oak trees standing in the coffee estate as not liable to capital gains tax. The Assessing Officer, relying on the decision of the Supreme Court reported in [Commissioner of Income Tax Vs. Jyotikana Chowdhurani and Others](#), , assessed the net capital gains arising from the sale of silver oak trees at the assessee's coffee estate at Yercaud at Rs. 1,66,640, Rs. 1,66,640 and Rs. 8,10,000. Aggrieved against the assessment so made, the assessee preferred appeals before the Commissioner of Income Tax (Appeals). The appellate authority

confirmed the assessment of capital gains on sale of shade trees, but reduced the quantum of capital gains to 30 per cent. of the sale price of the trees. In respect of the assessee's claim for setting off of the loss arising from the fall in the value of the estate due to the removal of the shade trees, the appellate authority, though did not accept the claim, reduced the quantum of capital gains to 30 per cent. of the total sale price. Aggrieved by the said order, the assessee took the matter on further appeal to the Tribunal. The Tribunal, relying on the earlier decisions, allowed the appeals of the assessee. Hence, these appeals are at the instance of the Revenue.

3. These appeals were admitted on August 4, 2008, on 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 holding that the receipts from the sale of old silver oak trees which were shade trees in the assessee's coffee estate and which have outlived their normal life and which were posing a threat to the existing coffee plants, as agricultural income and not assessable under the head "Capital gains" ?

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

5. Learned Counsel for the Revenue admits that the tax effect involved in this case is less than Rs. 2 lakhs which is the monetary limit for preferring an appeal by the Revenue, prescribed by the Central Board of Direct Taxes by its Circular F. No. 279/126/98-IT, dated March 27, 2000.

6. 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.

7. It is not the case of the Revenue that the issue involved in these appeals before the Tribunal fall within any one of the exceptions provided in the circular.

8. 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 (page 500):

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

260A 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 elevated 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 260A has to be rejected for the reason that if the contention is accepted, one of the sections would become virtually otiose and that cannot be the intention of the law makers.

9. Thus, following the long line of case law 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.

10. The said judgment of this case of [Commissioner of Income Tax Vs. Associated Electrical Agencies](#), has been relied by the Gujarat High Court in the case of [Commissioner of Income Tax Vs. Concord Pharmaceuticals](#), 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 Central Board of Direct Taxes is much binding on the Revenue and that requires no support of judicial precedent.

11. These appeals have been filed on July 22, 2008 and July 28, 2008. Hence, the circular dated March 27, 2000 is binding on the Revenue. In the light of the submission made by the learned senior counsel for the Revenue that the tax effect involved in this case is less than Rs. 2 lakhs, the limit prescribed under the abovesaid circular dated March 27, 2000 the appeals are dismissed. No costs.