

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :16.04.2014

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice T.S.SIVAGNANAM

Tax Case (Appeal) No.898 of 2013

The Commissioner of Income Tax

Chennai.

... Appellant

-vs-

Shri Madurai Chettiyar Karthikeyan

No.64, 4th Trust Cross Street

Mandavelipakkam

Chennai 600 028.

...Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench dated 28.01.2011 passed in I.T.A.No.723/Mds/2010 for the assessment year 2007-08.

For appellant : Mr.T.Ravikumar

Standing Counsel for Income Tax

Department

JUDGMENT

(The Judgment of the Court was made by

CHITRA VENKATARAMAN.J.,)

Revenue seeks admission of the Tax Case (Appeal) relating to the assessment year 2007-08 raising the following question of law:

"Whether on the facts and in the circumstances of the case the Income Tax Tribunal was right in law in holding that Section 2(22)(e) of the Income Tax Act is not attracted?"

2. The assessee is the proprietor of Shri Vekkaiamman Builders and Promoters and he also happens to be the Managing Director of Southern Academy of Maritime Studies Private Limited, in which he holds share of 63%. The Assessing Officer added a sum of Rs.87,57,297/- to the assessee's income under Section 2(22)(e) of the Income Tax Act, 1961 as deemed dividend from Southern Academy of Maritime Studies Private Limited, rejecting the assessee's contention that the company awarded construction contract to the assessee's proprietary concern after completing with the procedures of the companies Act. The assessee stated that it being a normal business transaction, the amount received for the purpose of executing the construction work would not fall within the scope of "loans and advances" under Section 2(22)(e) of the Income Tax Act, 1961. The Assessing Officer however viewed that when the assessee was having more than 10% share holding in the company, the said amount received by the assessee was liable to be assessed as deemed dividend. In so holding the Assessing Officer referred to an amount of Rs.1,90,00,000/- (Rupees one crore and ninety lakhs only) shown by the assessee under the head unsecured loan received from Vista Securities Technics Pvt.Ltd. Applying the decisions of the Mumbai High Court reported in (1973) 92 ITR 105 [CIT vs. Jamunadas Khrimji Kothari] and the Apex Court reported in (1998) 229 ITR 444 [Miss.P.Sarada vs. CIT] , the Assessing Officer however, held that an amount of Rs.87,57,297/- was liable to be treated as deemed dividend at the hands of the assessee.

3. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals) who agreed with the assessee that he was rendering services to his client M/s.Southern Academy Maritime Studies P.Ltd. by constructing building; that the advance money received was towards construction of the building for the said private limited company. The assessee produced the minutes of the board meetings and ledger copies of the transactions. Referring to the decisions of the Delhi High Court reported in 173 Taxman 407 (Delhi) [CIT vs. Ambassador Travels P.Ltd.] and (09) 181 Taxmann 155, [CIT vs. Vikramjit Sen and Rajiv Shakhder] the Commissioner viewed that the trade advance was in the nature of money given for the specific purpose of constructing the building for the private limited company and hence the payment could not be treated as deemed dividend falling within the ambit of Section 2(22)(e) of the Income Tax Act, 1961. Thus, the Commissioner allowed the assessee's appeal.

4. Aggrieved by this, the Revenue went on appeal before the Income Tax Appellate Tribunal, which confirmed the view of the Commissioner. The Tribunal pointed out that the reliance placed on by the Revenue on the decision of the Apex Court reported in 229 ITR 444 (cited supra) and the Bombay High Court reported in 92 ITR 105 (cited supra) were distinguishable on facts. When the Commissioner had come to the factual finding after verifying the minutes and ledger copies that the amount received by the assessee was in the course of normal business transaction against the services rendered by him to the company for constructing buildings, the question of invoking Section 2(22)(e) of the Income Tax Act, 1961 did not arise. The Tribunal further relied on the decision of the Delhi High court referred to by the Commissioner in his order and held that the same covered the issue in assessee's favour. In the course of considering the merits of the assessee's case as well as the Revenue's case, the Tribunal pointed out that the Assessing Officer, in one place had stated that the amounts were received by the assessee from the Southern Academy of Maritime Studies Pvt.Ltd., whereas in para No.4.2, of the Assessment order he mentioned about another company in the name of M/s.Vista Securities Technics Pvt.Ltd., which clearly pointed out that the Assessing Officer was not clear as to from which company, the assessee had received this amount. Thus, the Tribunal rejected the Revenue's appeal. Hence the present appeal by the Revenue.

5. Learned Standing Counsel appearing for the Revenue submitted that the mere mistake in mentioning of the correct name of the company from where the amounts were received would not be fatal to the case of the Revenue. Quite apart, the Southern Academy of Maritime Studies Private Limited paid a sum of Rs.1,20,23,396/- to the assessee by cheque on various dates and such receipts were not related to any business dealings and were only in the nature of receipt of loans or advances merited to be re-considered by this Court.

6. We do not agree with the said submission primarily for the reason that the amount referred to as received from M/s.Vista Securities Technics Pvt.Ltd., is stated to be to the tune of Rs.1,90,00,000/-, whereas the amount treated as deemed dividend in the order of assessment was to the tune of Rs.87,57,297/-. Apart from that, the ground taken before us also states that the private limited company had paid a sum of Rs.1,20,23,396/-. This has no correlation to the assessed figure and the deemed dividend considered under Section 2(22)(e) of the Income Tax Act, 1961 to the extent of Rs.87,57,297/-. Thus, we find apart from agreeing with the conclusion in the order of the Tribunal pointing out to the confusion in the assessment order, the ground taken before this Court also suffers from the same error. Going by the undisputed fact that the Revenue had not disputed the fact that the assessee had executed work for the company in the nature of construction of buildings and the said transaction being in the nature of a simple business transaction, we do not find any justifiable ground to bring the case of the assessee within the definition of deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961. In the circumstances, we reject the Revenue's case at the admission stage itself.

7. In the result, the Tax Case (Appeal) is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

(C.V.,J) (T.S.S.,J)

16.04.2014

Index:Yes/No

Internet:Yes/No

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To

1. The Assistant Commissioner of Income Tax,  
Company Circle VI(3),Chennai.

2. The Commissioner of Income Tax (Appeals-V)  
Tiruchirapalli

3. The Income Tax Appellate Tribunal, Chennai "B" Bench

CHITRA VENKATARAMAN, J.

and

T.S.SIVAGNANAM, J.

Tax Case (Appeal) No.898 of 2013

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