

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.03.2015

Coram

The Honourable Mr.Justice R.SUDHAKAR
and
The Honourable Mr.Justice R.KARUPPIAH

Tax Case (Appeal) No.118 of 2015

Commissioner of Income Tax
Chennai.

..... Appellant/Appellant

-vs-

M/s. STADS Ltd.
No.74, Shop No.4/1, Basement,
Penna Plaza, Arcot Road,
Kodambakkam,
Chennai - 600 024.
PAN:AABCS0479F

...Respondent/Respondent

APPEAL filed under Section 260 A of the Income Tax Act against the order dated 03.09.2014 made in I.T.A.No.1694/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai "A" Bench for the assessment year 2003-04.

against the Order of the Commissioner of Income Tax(Appeals)-VI, Chennai - 34 dated 28.02.2014 and made in ITA No.1217/13-14/A-VI for the Assessment Year 2003-04 against the Order of the Assistant Commissioner of Income Tax, Company Circle VI(4) Chennai -34 dated 31.12.2010 and made in PAN/GIR NO.AABCS0479F for the Assessment Year 2003-04.

For Appellant : Mr.T.Ravikumar
Standing Counsel

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the amounts transferred by the assessee company to the General Reserve on amalgamation is not in the nature of any benefit or perquisite and thus not taxable under Section 28(iv) of the Income Tax Act, 1961?"

2. The brief facts of the case are as follows:

The assessee is engaged in the business of software development and sale of developed software packages. During the financial year 2002-03, four companies, viz., M/s.I-Trigger Technologies Ltd., M/s.Web-net Technologies Ltd., M/s.Linus and M/s.Himachal Futuristic Communications Ltd., had amalgamated with the assessee company and a sum of Rs.2,16,88,220/- had been reflected as reserves and surplus in the balance sheet. The assessee company filed its return of income for the assessment year 2003-04 on 01.12.2003. Since the assessee did not respond to the notice issued under Section 148 of the Income Tax Act, field enquiries were conducted and based on the report received from the Inspector of Income Tax, the Assessing Officer completed the assessment under Section 144 of the Income Tax Act vide order dated 31.12.2010 bringing a sum of Rs.2,16,88,220/- to tax in terms of Section 28(iv) of the Income Tax Act.

3. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal, after calling for a remand report from the Assessing Officer, holding as follows:

"5.5. I have considered the findings of the AO, the remand report and also the submissions made by the AR of the appellant and also the judicial pronouncements cited by the AR of the appellant on this issue. I have also perused the order of the High Court of Madras dated 10.3.2003 approving the scheme of amalgamation of the three transferor companies viz., M/s. I.Trigger Technologies (P) Ltd., M/s.Web Technologies (P) Ltd., Linus Solutions (P) Ltd. with transferee company viz., M/s.System Telecom and Data Services (P) Ltd. (the Stad Ltd.) and also the details of combined share capital of the four companies prior to amalgamation and post amalgamation. As per the details provided by the appellant, the combined share capital of the four companies before the amalgamation was Rs.3,04,48,600/- and equity share capital of the company post amalgamation was Rs.87,60,380/- and the difference was Rs.2,16,88,220/-. It was explained by the AR of the appellant that the difference of Rs.2,16,88,220/- was the amalgamation reserve. From the above facts and circumstances of the case, I find that the nature of the receipt ie., amalgamation reserve is

not on account of any normal business transaction or revenue transactions. The nature of the receipt is a capital receipt which arose on account of the amalgamation of the companies. The ratio of the decision rendered by ITAT, Calcutta Bench, cited by the AR of the appellant in the case of ITO v. Shreyans Investments (P) Ltd. in IT Appeal No.1485 (Kol)/2011 dated 6.3.2013 is fully applicable to the facts of the present case. The capital receipt is also not taxable under the head Capital Gains in view of the section 47(iv) of the I.T.Act. Under the facts and circumstances of the case and legal position I am of the view that the addition made by the AO requires to be deleted. Hence the AO is directed to delete an amount of Rs.2,16,88,220/-."

4. Aggrieved by the said order of the Commissioner of Income Tax (Appeals), the Revenue pursued the matter before the Tribunal. The Tribunal, by a brief order, confirmed the order of the Commissioner of Income Tax (Appeals).

5. As against the said order of the Tribunal, the Revenue once again pursued the matter before this Court by filing the present appeal.

6. Heard Mr.T.Ravikumar, learned Standing Counsel appearing for the appellant and perused the materials placed before this Court.

7. It is seen that by order dated 10.3.2003, this Court approved the scheme of amalgamation of three transferor companies, viz., M/s. I.Trigger Technologies (P) Ltd., M/s.Web Technologies (P) Ltd., Linus Solutions (P) Ltd. with transferee company viz., M/s.System Telecom and Data Services (P) Ltd. (the Stad Ltd.), who is the assessee/respondent herein. In the scheme of amalgamation, the details of the combined share capital of the four companies prior to the amalgamation and post amalgamation was explicitly given. Based on the same, the assessee claimed that the combined share capital of the four companies before amalgamation was Rs.3,04,48,600/- and equity share capital of the company post amalgamation was Rs.87,60,380/- and the difference was Rs.2,16,88,220/-. The assessee showed the said difference under the category "reserves and surplus" in the balance sheet.

8. The Department took a view that it is a profit and gains or profession, more particularly it is a value of benefit or perquisite arising from business or exercise of profession. But the Commissioner of Income Tax (Appeals), set aside the view of the Department, which the Tribunal has confirmed by a one line order. Probably, that prompted the Revenue to pursue the matter before this Court forcing us to write more explicitly and detailed order on the

interpretation of Section 28(iv), which Sri.T.Ravikumar, learned Standing Counsel wants us to interpret in the present case.

9. The short point that arise for consideration in this appeal is whether the amalgamation reserve consequent to the merger of four companies would fall within the ambit of profits and gains of business or profession, more particularly under Section 28(iv) of the Income Tax Act.

10. Since the issue revolves around Section 28(iv) of the Income Tax Act, it is necessary to extract the same herein for better clarity.

"Profits and gains of business or profession.

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(i).....

(ii)....

(iii).....

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession ;"

11. A plain reading of the above-said provision makes it clear that the amount reflected in the balance sheet of the assessee under the head 'reserves and surplus' cannot be treated as a benefit or perquisite arising from business or exercise of profession. The difference amount post amalgamation was the amalgamation reserve and it could not be said that it is out of normal transaction of the business. The present transaction is capital in nature arose on account of amalgamation of four companies. Hence, we have no hesitation to hold that the manner in which the Revenue wants to treat this amount is not in consonance with Section 28(iv) of the Income Tax Act.

12. In the result, the order of the Tribunal stands confirmed and this Tax Case (Appeal) stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Chennai "A" Bench
2. The Commissioner of Income Tax (Appeals), VI, Chennai.
3. The Assistant Commissioner of Income Tax, Company Circle VI(4), Chennai.

1 cc to Mr. T.Ravikumar, Advocate, SR.No.13562

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