IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE R.KARUPPIAH

Tax Case (Appeal) Nos.46 & 47 of 2015
&
M.P.No.1 of 2015

The Commissioner of Income Tax
Chennai. ...Appellant in the above T.C.s

versus

M/s.Saiyana Warehouse Pvt. Ltd.
T-40B, 16th Cross Street,
Besant Nagar,
Chennai - 600 090. ...Respondent in the above T.Cs

PRAYER: Tax Case Appeals filed under Section 260 A of the Income Tax Act, 1961 as against the order dated 29.9.2010 made in I..T.A..Nos.1665 & 1666/Mds/2009 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment years 2005-06 and 2006-07.

Prayer in TC No.46, 47 of 2015 filed against the order of the Commissioner of Income Tax (Appeals) in ITA No. 269, 270/2008 & 2009 dated 13.03.2009, for the Assessment year 2005-2006, 2006-2007 against the order of the Assistant Commissioner of Income Tax Company Circle VI (1) Chennai - 34, under section 143 (3) of the Income Tax Act for the Assessment year 2006 - 2007 made in PAN GIR No.Sa-322/AAFCS1964D against the order of Income Tax Officer Company Circle VI (1) Chennai, dated 22.03.2007, made PAN GR No. Sa 322/AARCS1964D for the Assessment year 2005-2006 respectively.

For Appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising 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 law in holding that Ware Houses/godowns was to be charged under the head income from business only and not income from house property?"

2. The brief facts of the case are as follows:
The assessee is having godowns/warehouses. The Assessing Officer completed the assessment and held that the income from warehousing has to be taxed as income from house property only. Aggrieved by the same, the assessee filed appeals before the Commissioner of Income Tax (Appeals), who, by following the order of the Income Tax Appellate Tribunal in the case of SSM Estate Ltd. in I.T.A.Nos.1189, 1190 and 1191/Mds/2005 dated 24.08.2007, reversed the order of the Assessing Officer, thereby allowed the appeals. As against the said order of the Commissioner of Income Tax (Appeals), the Revenue pursued the matter before the Income Tax Appellate Tribunal.

3. Before the Tribunal the learned D.R. had fairly conceded that the decision in the case of SSM Estates Ltd. in I.T.A.Nos.1189, 1190 and 1191/Mds/2005 dated 24.08.2007 for the assessment year 2003-2004 has been rendered on identical facts in favour of the assessee. Hence, the Tribunal, by following its own decision rendered in the case of SSM Estates Ltd. in I.T.A.Nos.1189, 1190 and 1191/Mds/2005 dated 24.08.2007, decided the issue in favour of the assessee holding that the assessee itself had retained the possession and there is no fiduciary relationship of landlord and tenant.

4. Aggrieved by the order of the Tribunal the Revenue is before this Court.

5. Heard learned Standing Counsel appearing for the Revenue and perused the materials before this Court.

6. It is seen that the Tribunal relied on its own order in the case of in the case of SSM Estates Ltd. in I.T.A.Nos.1189, 1190 and 1191/Mds/2005 dated 24.08.2007 and decided the issue in favour of the assessee. Challenging the said order of the Tribunal in the case of SSM Estates Ltd. in I.T.A.Nos.1189, 1190 and 1191/Mds/2005 dated 24.08.2007, the Revenue filed appeals before this Court in T.C.(A) Nos.468 to 470 of 2008. This Court, by order dated 24.02.2015, dismissed the appeals filed by the Revenue by answering the question of law in favour of the assessee holding as follows:

> "7. It is seen that the findings of fact arrived at by the Tribunal is not in dispute. The decision of the Supreme Court in the case of Commissioner of Income Tax V. Indian Warehousing Industries Ltd. reported in 258 ITR 93 and that of the jurisdictional High Court in the case of Chennai properties and Investments Ltd. reported in (2004) 266 ITR 685 (Mad) are distinguishable on facts. In those cases, the receipts itself are rental receipts. Whereas, in the present case, the assessee itself had retained the possession and there is no fiduciary relationship of landlord and tenant.
>
> 8. The Tribunal, by going into the individual aspects of the business to come to the conclusion that it is a case of warehousing business and, therefore, would fall only under the head “Business Income”.
>
> 9. In view of the well considered reasoning given by the Tribunal, we find no reason to differ with the findings of fact recorded by the Tribunal, which reasoning is fully justified in the facts of the present case. This Court finds no good reason to differ with the said findings of fact. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.

7. Hence, following the above-said decision rendered by this Court in favour of the assessee in an identical circumstance, the above Tax Case (Appeals) are dismissed answering the question of law in favour of the assessee. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//
Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
Madras 'C' Bench.

2. The Commissioner of Income Tx
121, Mahatma Gandhi Road, (Assessment)
Chennai - 34.

3. The Assistant Commissioner of Income Tax
Company Circle VI (1)
Chennai - 34.

4. The Income Tax Officer (OSD)
Company Circle VI, (1),
Chennai - 34.

2 CCs to Mr.J.Narayanasamy, Sr. Standing Counsel for Income Tax
SR.No. 10035, 10036

Tax Case (Appeal) Nos.46 & 47 of 2015

JP (CO)
PSI (11.03.2015)