IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2015

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.1108 of 2007

Commissioner of Income Tax
Chennai. .. Appellant

Vs.

Cholamandalam Securities Ltd.
"Dare House"
No.2, NSC Bose Road
Chennai - 600 001. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 9.2.2007 made in I.T.A.No.2254/Mds/2005 for the assessment years 2002-2003.

Tax Appeal against order dated 1.8.2005 in ITA.No.490/2004-2005/A-/III on the file of the Commissioner of Income Tax (A) III Chennai for the assessment year 2002-2003 against the order dated 6.1.2005 in G.I.No.PA/.No.AABCC 5958R on the file of the Assistant Commissioner of Income Tax, Company Circle I (3) Chennai for the assessment year 2002-2003.

For Appellant : Mr.T.Ravi Kumar
Senior Standing Counsel

For Respondent : Mr.Venkat Narayanan
for M/s.SUbbaraya Aiyar

J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

The Revenue has filed this appeal challenging the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 9.2.2007 made in I.T.A.No.2254/Mds/2005 for the assessment years 2002-2003, and the same was admitted on the following question of law:

"Whether the Tribunal is right in holding that the stock exchange membership card is entitled to depreciation?"

2. The learned counsel on either side fairly submit that the question of law raised in this appeal has been decided in favour of the assessee and against the revenue by a decision of the Supreme Court in Techno Shares and Stocks Ltd. and others v. Commissioner of Income Tax, (2010) 327 ITR 323.

3. In Techno Shares and Stocks Ltd. and others case, referred supra, the Supreme Court categorically held as under:

"....... We hold that the said right of membership is a 'business or commercial right' which gives a non-defaulting continuing member a right to access the exchange and to participate therein and in that sense it is a licence or akin to licence in terms of section 32(1)(ii) of the 1961 Act. That, such a right vests in the exchange only on default/demise in terms of the Rules and bye-laws of the BSE, as they stood at the relevant time. Our judgment should not be understood to mean that every business or commercial right would constitute a 'licence' or a 'franchise' in terms of section 32(1)(ii) of the 1961 Act.

We answer the question at page 6 in the affirmative by holding that on the facts and circumstances of these cases the Tribunal was right in holding that depreciation was allowable on the cost of the membership card under section 32(1)(ii) of the 1961 Act. Accordingly, the impugned judgment(s) of the Bombay High Court is set aside and the appeal(s) filed by the nominated non-defaulting continuing member stands allowed with no order as to costs."

(emphasis supplied)

4. The above said view was reiterated by the Supreme Court in a subsequent decision in Commissioner of Income Tax v. Smifs Securities Ltd., [2012] 348 ITR 302.

5. In view of the law enunciated in the decisions cited supra, this appeal is dismissed by answering the substantial question of law against the Revenue and in favour of the assessee. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

sasi

To:

1. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Chennai Bench "A", Chennai.

2. The Secretary, Central Board
   of Direct Taxes, New Delhi.

3. The Commissioner of Income Tax (Appeals) - III
   Chennai.

4. The Assistant Commissioner of Income Tax
   Company Circle I(3), Chennai.

5. The Assistant Registrar
Income Tax Appellate Tribunal
III Floor
Besant Nagar,
Chennai

1 cc to Mr.R. Venkatanarayanan, Advocate, Sr. 2670
1 cc to Mr.T. Ravikumar, Advocate, Sr. 2388

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SSI (CO)
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