In the High Court of Judicature at Madras

Dated: 18.03.2015

Coram

The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Mr.JUSTICE R.KARUPPIAH**

Tax Case (Appeal) No.42 of 2007

Commissioner of Income Tax
Central II (1)
Chennai.

.... Appellant

Vs.

S.P.Thavamani
24, III Cross Street,
Dr.Seethapathy Nagar,
Chennai - 600 042.

.... Respondent

Appeal under Section 260A of the Income Tax Act against the order dated 28.07.2006 made in IT(SS) A.No.53/Mds/1998 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the block assessment period 1986-87 to 1996-97.

For Appellant : Mr.T.R.Senthilkumar
Standing Counsel for Income Tax

For Respondent : Dr.Anita Sumanth

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 dated 28.07.2006 made in IT(SS) A.No.53/Mds/1998 on the file of the Income Tax Appellate Tribunal Madras 'B' Bench for the block assessment period 1986-87 to 1996-97.

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

During the search conducted in the group cases of Talent Paper & Board Limited, Coimbatore on 12.2.1996, it was found that the assessee had made investment of Rs.20.00 lakhs towards share capital in the above-said company. Hence, the Assessing Officer issued notice under Section 158 BD of the Income Tax Act. The Assessing Officer rejected the explanation given by the assessee stating that the said amount was a gift and completed the block assessment treating the said amount as income in the hands of the assessee and accordingly, made additions.

3. Since the matter pertains to block assessment, the matter was taken up by the assessee to the Tribunal and the Tribunal by placing reliance on the decision in the case of P.R.Ganapathy and Smt.T.Kannaki in ITA Nos.310 & 311/M/2002 and 148/M/02 dated 9th February, 2004, held that the bonafides of the donor has been

established and therefore, the case of the assessee also merits consideration favourably. The Department pursued the matter before this Court on the question of law referred supra.

4. Heard learned Standing Counsel appearing for the Department and the learned counsel appearing for the assessee and perused the materials placed before this Court.

5. At the time of hearing, it is pointed out by the learned Standing Counsel appearing for the Department that the case of P.R.Ganapathy decided by this Court in favour of the assessee, which was relied on by the Tribunal was pursued before the Apex Court and the Apex Court in the decision reported in ***[2012] 26 taxmann.com 354*** remanded the matter holding as follows:

> *"3. P.R.Ganapathy, Respondent No.1, claims to have received purported gift from two NRIs, viz., T.Chandra and Pushpa Rani in the sum of Singapore Dollars 2,14,000/- and 1,70,000/- respectively. Respondent No.2-T.Kannaki, received purported gift in the sum of Singapore Dollars 1,70,000/-.*
>
> *4. On going through the records, we find that an important query was raised by the Department as to whether these two donors had the financial capacity to make the gift(s) in favour of the assessees herein. This*

query has not at all been answered by the Income Tax Appellate Tribunal ['ITAT' for short]. The ITAT merely states that the two donors were assessed to tax at Singapore. Being assessed at Singapore, does not answer the query raised by the Department.

5. In this case, the Department has invoked Section 68 of the Income Tax Act, 1961. The burden is on the assessees to show that the amount received by purported gift(s) from the two donors was a "gift" in the legal sense. Assessees have not led evidence to show whether the alleged donors had adequate funds in their respective accounts to make these purported gift(s) in Singapore Dollars, which is almost running into more than five lakhs. This question has also not been considered by the High Court, which has summarily dismissed the appeal. However, it is contended by the learned counsel for the assessees that no opportunity was given to prove their case.

6. In the circumstances, we set aside the impugned Orders of the High Court and the ITAT. We direct the ITAT to examine this question in the light of what is stated above. It would be open to the assessees to produce relevant evidence in the light of the judgment of this Court in the case of Commissioner of Income Tax v. P.Mhanakala [2007] 6 SCC 21. [291 ITR 278]

7. Accordingly, the civil appeals filed by the Department are allowed with no order as to costs."

6. We find that the Tribunal in the present case has merely followed the decision in the case of *P.R.Ganapathy* and allowed the appeal of the respondent/assessee. In the light of the decision of the Supreme Court in the case of P.R.Ganapathy (supra), we have no hesitation to set aside the order of the Tribunal. Accordingly, the order of the Tribunal stands set aside and the matter is remanded back to the Tribunal to decide the issue along with the case of P.R.Ganapathy on this issue.

This Tax Case (Appeal) stands disposed of. No costs.

Index : Yes/No (R.S.,J) (R.K.,J)
Internet:Yes/No 18.03.2015
sl

To

1. The Income Tax Appellate Tribunal Madras 'B' Bench

2. The Asst. Commissioner of Income Tax, Central Circle – II (1),
Chennai – 600 034.

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

sl

<u>Tax Case (Appeal) No.42 of 2007</u>

<u>18.03.2015</u>