IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM:

THE HONOURABLE **MR.JUSTICE M.JAICHANDREN**
AND
THE HONOURABLE **MRS.JUSTICE S.VIMALA**

T.C.A.No.649 of 2008
and M.P.No.1 of 2008

Commissioner of Income Tax,
Salem. ... Appellant

..vs..

Shri.R.Prabhakaran ... Respondent /Assessee

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 05.04.2005 made in I.T.A.No.633/Mds/2003 on the file of the Income Tax Appellate Tribunal, Chennai Bench 'D' for the assessment year 1993-94.

For Appellant : Mr.J.Narayanaswamy
For Respondent : Mr.Philip George

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J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

This Tax Case Appeal has been filed as against the order, dated 05.04.2005, made in I.T.A.No.633/Mds/2003, on the file of the Income Tax Appellate Tribunal, Chennai Bench 'D', for the assessment year 1993-94.

Brief Facts:-

2. The Revenue is the appellant and the respondent is the assessee. The assessee was employed as the Managing Director of M/s.Salem Textiles Limited. The Assessment of the assessee, for the assessment year 1993-94, was completed, determining the total income at Rs.19,46,700/-. In the case filed by the Company, M/s.Salem Textiles Limited, in respect of the assessment years 1992-93 and 1993-94, the Commissioner of Income Tax (Appeals) had passed a consolidated order holding that the medical expenses reimbursed to the Managing Director would have to be regarded as forming part of salary or profits, in lieu of salary in the hands of the Managing Director. The very same view has been adopted by the Assessing Officer for the present assessment order. As per the directions of the Commissioner of Income Tax (Appeals), the asseesee's assessment was reopened under Section 148 read with 153(2) proviso 2(A) of the Income Tax Act, 1961, (hereinafter will be referred to as “the Act”). The reassessment was completed by the Assessing Officer by adding perquisite value of medical expenses at Rs.14,63,450/- .

3. Aggrieved by the order of the Assessing Officer, the assesee has filed the appeal before Commissioner of Income Tax (CIT) (Appeals). Before the CIT (Appeals), the Assessee challenged the reopening on the ground that the assessment could not be reopened on the basis of the decision of the CIT (Appeals) in the case filed by the company. After elaborately discussing the case law relied on by the assessee's counsel and considering the amended provisions of Section 147 of the Act, the CIT (Appeals) upheld the reopening the assessment under Section 147 of the Act.

4. Aggrieved by the order of the CIT (Appeals), both the Revenue and the assessee filed appeals before the Income Tax Appellate Tribunal (ITAT), Chennai Bench. The Tribunal referred to its order in the case of the company, Salem Textile Mills Ltd., in I.T.A.No.33/Mds/96 wherein the Tribunal has expunged the direction of the CIT (Appeals) to assess the perquisite value of medical expenses incurred by the company on its Managing Director. The Revenue has sought to keep the issue alive in the appeal arising out of the present assessment order in the case of the assessee. The Tribunal reiterated its decision that the direction

of the CIT (Appeals) to assess the perquisite value in the hands of the Managing Director, namely, the assessee was not valid. The Revenue's appeal was dismissed. Since the only dispute in the appeals of the Revenue and the assessee was regarding the inclusion of the perquisite value of the medical expenses, the Tribunal dismissed the assessee's appeal as infructuous.

5. Aggrieved by the order of the Income Tax Appellate Tribunal, the revenue has preferred this appeal, raising the following substantial questions of law:

> *"1.Whether on the facts and in circumstances of the case, the Income Tax Appellate Tribunal was right in reiterating its decision given in the case of M/s. Salem Textiles Limited of which the assessee was the Managing Director, expunging the directions of the Commissioner of Income Tax (Appeals) to treat the expenditure on medical treatment of the Managing Director incurred by the company as taxable perquisite in the hands of the assessee under Section 17 (1)(iv)?*
>
> *2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure incurred by the Company, M/s Salem Textiles Limited towards the medical expenses of the assessee, who was the Managing*

Director of the Company to the tune of Rs.14,63,450/- was not assessable as perquisite or profits in lieu of salary in his hands?"

6. The main contention of the appellant / Revenue is that, the expenditure incurred in the medical treatment of the Managing Director by the company would be taxable, as perquisite, in the hands of the Managing Director, as contemplated under Sections 17 (1) (iii) and (vi) of the Act and therefore, the order of the Income Tax Appellate Tribunal is liable to be set-aside.

7. The contention of the learned counsel for the Assessee is that medical expenses incurred by M/s.Salem Textiles Limited, to its Managing Director, Shri.R.Prabhakaran, outside India, is not a perquisite, in his individual hands, as per the provisions of Section 17 (2) (vi) of the Act.

7.1. Yet another contention of the learned counsel for the Assessee that, as per the proviso to Section 147 of the Act, the notice issued under Section 148 of the Act, reopening the assessment, should have been issued only on or before the expiry of the four years from the end of the relevant assessment year, i.e., on or before 31.03.1998, and that notice issued in this case, on 15.02.2001, is clearly barred by limitation.

8. At this juncture, the learned counsel for the Assessee pointed out that the very same issue has been answered against the Revenue in the Tax Case Appeal Nos.538 and 539 of 2005, dated 29.06.2011, by a Division Bench of this Court and therefore, the Appeal of the Revenue is liable to be dismissed. In support of the contention, the copy the order passed in the said Appeals has been produced.

9. A perusal of the said order reveals that in the appeals filed by the Revenue, as against M/s. Salem Textiles Limited, Salem, (in which the present Assessee was the Managing Director) raising the very same substantial questions of law, this Court has answered the substantial questions of law against the Revenue and thus, dismissed the Appeals of the Revenue.

10. Under such circumstances, the substantial questions of law raised in the present appeal need not be gone into, in view of the judgment of the Division Bench of this Court, dated 29.06.2011,

in T.C.A.Nos.538 and 539 of 2005. Therefore, this Appeal stands dismissed. Consequently, the connected MP is closed.

(M.J.J.) (S.V.J.)
30.11.2015

Internet : Yes/No
Index : Yes/No
arr / srk

To

1. The Income Tax Appellate Tribunal
   Chennai Bench 'D', Chennai.

M.JAICHANDREN, J.
and
S.VIMALA, J.

arr / srk

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& M.P.No.1 of 2008

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