IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Tax Case(Appeal) Nos.1185/2007 & 1186/2007

S.Sivakadacham [Deceased]
By L/H Mrs. M.Gunapushnam Ammal
No.1, Rajeswari Nagar, Mayiladuthurai. .. Appellant in both the appeals

-vs-

The Deputy Commissioner of Income Tax
Special Range, Tiruchirappalli. .. Respondent in both the appeals

TAX CASES filed under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, MADRAS 'C' Bench, Chennai dated 29.07.2003 passed in ITA.Nos.810 & 809/MDS/1998 respectively.

For Appellant in both cases	:	Mr.A.S.Sriraman
For Respondent in both cases	:	Mr.J.Narayanasamy

COMMON JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J)

These Tax Case Appeals filed by the assessee [now prosecuted by his wife after his death] was admitted on 04.01.2008 on the following two questions of law:-

"[1] Whether the Tribunal is correct in confirming the common order of the First Appellate Authority for the Assessment years 1994-95 and 1995-96 in rejecting the claim for the concessional rate of tax in terms of Section 115E read with section 115H of the Act for the interest income earned from the foreign exchange deposits held by the deceased appellant?

[2] Whether the Tribunal is correct in confirming the order of the First Appellate Authority even though the said authority had not followed the order rendered under identical set of facts for the Assessment Years 1991-92 to 1993-94 by the Co-ordinate Authority upon violating the well-settled legal principles of Judicial discipline?".

2 Heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Mr.J.Narayanasamy, learned Standing Counsel appearing for the Department.

3 The assessee was working as an Electrical Engineer in Malaysia. He was a Non Resident Indian. Out of the income that he earned in Malaysian Dollars, he made Fixed Deposits in India. Finally he came down to India on 12.06.1989 and settled down here. As a consequence, his status got changed to that of a resident in India from the Assessment Year 1990-1991.

4 The assessee had deposits in Foreign currencies, in three Accounts, viz., [1]Foreign Currency [Non Resident] Account ; [2] Non Resident [External] Rupee Account ; and [3] Non Resident [Non repatriable] Rupee Deposit Account.

5 The assessee renewed, after his status got converted as resident in India, the Fixed Deposits that he made while he was a Non-Resident Indian. The Assessing Officer held that the assessee was not entitled to the benefit of Section 115H of the Act, for the Assessment Years 1994-1995 and 1995-1996. The Commissioner of Income Tax Appeals dismissed the appeals filed by the assessee and the decision was confirmed by the Tribunal. While the proceedings were on, the assessee died on 16.11.1998 and hence, further proceedings were prosecuted by the wife.

6 Insofar as the first question of law is concerned, Mr.J.Narayanasamy, learned Standing Counsel relies upon a decision of this Court in *DR.M.MANOHAR Vs. ASSISTANT COMMISSIONER OF INCOME TAX* **[339 ITR 0049]**. But there are two difficulties in accepting the said decision. The first is that no question of law appears to have been either framed nor dealt with in the said decision. The second difficulty is that this Court dealt only with the question as to how the interest income arising out of Foreign Exchange Asset has to be treated. Though in Paragraph 4 of the said decision, there is a reference to the renewal of the Fixed Deposits, the entire discussion from paragraphs 9 to 12 revolved only around the treatment of interest income from out of the Fixed Deposits. Therefore, we do not think that the said decision answers the first question in favour of the Department.

7 In any case, the second question of law has to be answered in favour of the appellant/assessee. This is for the reason that in respect of the Assessment Years 1991-1992, 1992-1993 and 1993-1994, the CIT Appeals has decided the very same issue in favour of the assessee. The Department had not filed any Second Appeal before the Tribunal. Such an argument was raised by the assessee, in his Memorandum of Appeal before the Tribunal. But, the Tribunal did not answer the same.

8 Therefore, the second question of law is answered in favour of the assessee. In view of the same, we reserve our opinion on the first question of law for an appropriate case.

9 The Tax Case Appeals are allowed.

[V.R.S., J] [N.K.K., J]

24.02.2016

Index : Yes / No

Website : Yes / No

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V.RAMASUBRAMANIAN, J.,
AND
N.KIRUBAKARAN, J.,
AP

To
1.The Deputy Commissioner of Income Tax
Special Range, Tiruchirappalli.

2.The Income Tax Appellate Tribunal
"C" Bench, Madras.

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