In the High Court of Judicature at Madras

Dated : 09.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Tax Case Appeal Nos.1311 and 1312 of 2007

The Commissioner of Income Tax,
Tamil Nadu I, Madras. ...Appellant

Vs

M/s.Cholamandalam Investment and
Finance Co., Chennai-1. ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the order dated 15.12.2006 made respectively in I.T.A.Nos.46 and 47/Mds/2005 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the assessment years 1996-97 and 1997-98.

For Appellant : Mr.T.Ravikumar
For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Iyer

COMMON JUDGMENT
(Judgment was delivered by V.RAMASUBRAMANIAN,J)

Both these appeals, filed by the Revenue under Section 260A of the Income Tax Act, were admitted on 10.10.2007 on 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 the reopening of the assessment made by the Assessing Officer is bad in law and in annulling the assessment respectively for the assessment years 1996-97 and 1997-98, even though the assessee had not disclosed facts fully truly before the Assessing Officer regarding the nature of the amount claimed as exempt was not made in the return of chargeable interest ?"*

2. Heard Mr.T.Ravikumar, learned Standing Counsel for the appellant/ Revenue and Mr.R.Vijayaraghavan, learned counsel for the respondent/ assessee.

3. The respondent/assessee is engaged in the business of leasing and financing. The Assessing Officer completed the original assessment under Sections 8(2) read with 15 of the Interest Tax Act, 1974 on 7.3.2000, for the assessment years 1996-97 and 1997-98.

4. Subsequently, the Assessing Officer claimed to have noticed that an amount of Rs.1,56,58,618/- has been claimed as exempt on the ground that the same represented bill discounting charges for the assessment year 1996-97. Similarly, it was also noticed that the assessee had claimed an amount of Rs.1,05,20,866/- as exempt on the ground that the same represented bill discounting charges, for the assessment year 1997-98.

5. Therefore, the assessments were sought to be reopened by the issue of a notice under Section 10(a) of the Interest Tax Act, 1974 dated 27.3.2003. The orders of assessment were passed in common for both the assessment years on 26.9.2003. The appeals filed by the assessee were allowed by the Commissioner of Income Tax (Appeals), forcing the Revenue to take the matter on second appeal to the Income Tax Appellate Tribunal. The Tribunal dismissed the the appeals in I.T.A.Nos.46 and 47/Mds/2005 relating to the assessment years 1996-97 and 1997-98, forcing the Revenue to come up with the above appeals.

6. Admittedly, the reopening of assessment was made beyond four years. Therefore, it was claimed in the notice for reopening the assessment that there was an omission on the part of the assessee to make a full and true disclosure of all facts.

7. The nature of the omission on the part of the assessee was indicated in the notice for reopening the assessment as an omission to indicate the nature of the discounting charges. The amount, in respect of which, the assessee claimed exemption, related to discount on treasure bills. The Department claimed that under Section 2(7) of the Interest Tax Act, discounting charges alone are excluded from the definition and that a discount on treasure bills does not stand excluded. The Department perceived that this distinction between a discount on treasure bills and discounting charges was omitted to be brought to the notice of the Assessing Officer, entitling the Assessing Officer to reopen the assessment after four

years on the ground of failure to furnish full and true information.

8. But, as rightly pointed out by the Tribunal, the case on hand was actually a scrutiny assessment. It was done under Section 8 of the Interest Tax Act, 1974. Sub-Sections (1) and (2) of Section 8 of the Interest Tax Act, 1974 read as follows :

> *"8. Assessment - (1) For the purposes of making an assessment under this Act, the Assessing Officer may serve on any person, who has furnished a return under Section 7 or upon whom a notice has been served under Sub-Section (2) of Section 7 (whether a return has been furnished or not) a notice requiring him on a date thereon to be specified, to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.*
>
> *(2) The Assessing Officer, after considering such accounts, documents or evidence, if any, as he has obtained under Sub-Section (1) and after taking into account any relevant material which he has gathered, shall, by an order in writing, assess the chargeable interest and the amount of the interest tax payable on the basis of such assessment."*

9. Admittedly, the assessee made a disclosure about the amount, in

respect of which, they were making a claim under the heading 'bill discounting charges'. Since it is a scrutiny assessment, the Assessing Officer was obliged to consider the accounts, documents and evidence before passing the orders of assessment. Normally, it is presumed that an officer entrusted with a statutory function, carries it out in accordance with law unless it is assailed to be not so. It is not the case of the Department that there was a failure on the part of the Assessing Officer to discharge his duties under Section 8(2) properly. In such circumstances, it must be presumed that there was no omission on the part of the assessee or that there was an omission on the part of the Assessing Officer to scrutinize the accounts as per Section 8(2). In all other cases, reopening is not possible.

10. Hence, the question of law is answered in favour of the assessee. Accordingly, the tax case appeals are dismissed. No costs.

09.3.2016

Internet : Yes

To
The Income Tax Appellate Tribunal, 'A' Bench, Chennai.
RS

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J

RS

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of 2007

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