IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Tax Case (Appeal) Nos.387 and 859 of 2007

M/s.Carburettors Ltd.,
177, Anna Salai,
Chennai-600 002.
.. Appellant in T.C.(A).N o.387 of 2007

M/s.Carburettors Ltd.,
476, Temple Towers,
Anna Salai,
Chennai-600 035. .. Appellant in T.C.(A).No.859 of 2007

Vs.

The Asst. Commissioner of Income Tax,
Company Circle-I(3),
Chennai. .. Respondent in T.C.(A).No.387 of 2007

The Asst. Commissioner of Income Tax,
Company Circle-1(1),
Chennai. .. Respondent in T.C.(A).No.859 of 2007

Tax Case (Appeal) No.387 of 2007 filed under Section 260-A of the Income Tax Act against the order dated 22.09.2006 made in I.T.A.No.1846/Mds/2002 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the assessment year 92-93.

T.C.Appeal NO.859/07:Against the order of Income Tax Appellent tribunal, Madras Bench 'D'Madras made in ITA.NO.531/MDS/96 dated 1/10/1999 for the assessment year 1992-93, against the order of Commissioner of Income Tax,121, Mahatma Gandhi Road, Madras-34, Made in C.No.218-I(3)/95-96 dated 16/1/96 for the Assessment year 1992-93 against the order of Assistant commissioner of Income Tax, Income Tax Department made in PAN/GIR No.3C-147-504-CN 7332 dated 9/3/95 for the Assessment year 1992-93 in TCA.NO.859/07.

TC.Appeal.No.387/07:
Against the order of Commissioner of Income Tax(Appeals)

III,121,Mahatma Gandhi Road,Chennai-34. made in ITA.No.Tr.264/2001-02/AIII dated 20/9/02 for the Assessment year 92-93, against the order of Assistant Commissioner of Income Tax,Income Tax Department,Chennai, Made in PAN/GIR.No.3-C/47-004-CN-7332 dated 9/3/95 for the assessment year 1992-93 in TCA.387/07.

Tax Case (Appeal) No.859 of 2007 filed under Section 260-A of the Income Tax Act against the order dated 22.09.2006 made in I.T.A.No.531/Mds/1996 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the assessment year 1992-93.

For appellant in both the appeals : Mr.S.Sridhar

For respondent in both the appeals: Ms.Hema Muralikrishnan, Standing Counsel for Income Tax

JUDGMENT

(The Judgment of the Court was delivered by Nooty.Ramamohana Rao,J)

T.C.(A).No.387 of 2007:

This appeal is preferred by the assessee calling in question the order passed by the Income Tax Appellate Tribunal in the appeal preferred by it in I.T.A.No.1846/Mds/2002.

2. Heard Mr.Sridhar, learned counsel appearing for the appellant/assessee (company) and Ms.Hema Murali Krishnan, learned Standing Counsel appearing for the respondent-Income Tax Department (Revenue) for a considerable length of time.

3. Before we proceed any further, it is only apt to notice that the Tribunal had concluded its exercise in the following words recorded in paragraph 20 of the judgment:

> "20. Since the assessee had not filed the Report of the Chartered Engineer and the claim of assessee before Assessing Officer was that it was a sale of business as going concern without assigning item-wise value of the assets transferred, the Assessing Officer had no occasion to examine the case on the basis of transfer of undertaking assets valued by Chartered Engineer. Accordingly, we set aside the issue to the file of Assessing Officer, who will examine the chargeability of the sum received by assessee to capital gains/profit under section 41(2) of the Act on consideration of valuation report by

the Chartered Engineer and business valuation by S.B.Billimoria & Co. and also material available on records of the purchaser company, i.e. Ucal Component Ltd. after affording the assessee a reasonable opportunity of being heard."

4. Learned counsel for the assessee contended that the above conclusion arrived at by the Tribunal is erroneous for more than one good reason. Firstly, the Tribunal has erroneously admitted the additional evidence let in by the Revenue. Secondly, it has also erred in construing that the report of the Chartered Engineer is secured by the assessee, and thirdly, it has also construed that the plea of the assessee that the sale of business as "slump sale" is to be re-examined once again.

5. The right of the Tribunal to admit additional evidence in accordance with Rule 29 of the Income Tax Appellate Tribunal Rules, has fallen for consideration before a Division Bench of this Court in the case of Commissioner of Income Tax Vs. Ku.Pa.Krishnan, reported in 2012 (Vol.345) ITR 38 (Mad). The Division Bench of this Court has considered the matter and found that when Rule 18(4) is read with Rule 29 of the aforementioned Rules, there would not be any difficulty in holding that in terms of Rule 29, the additional evidence can also be produced before the Tribunal. In this view of the judgment rendered by this Court earlier in the aforementioned case, the first objection of the learned counsel for the appellant may not detain us any further.

6. Insofar as the fact as to whether it is the assessee who has commissioned the Chartered Engineer and secured a report or the purchaser of the sale indulged in by the assessee who commissioned a Chartered Engineer, also may not be really relevant. It is now for the assessing authority to apply his mind independently as to whether for upholding the claim of the assessee that it has indulged in "slump sale" or not, the same is required to be examined and answered. For that very purpose, the Tribunal has remanded the matter for consideration afresh. As a matter of rule of prudence, whenever an appellate forum remands a case back for consideration afresh, the primary authority or the original authority has to proceed afresh in the matter by treating the same as a clean slate basis. Now, for achieving that objective, the appellate forum could be recording a statement that "uninfluenced in any manner by the observations contained in the remand order, the matter be decided afresh". Not that its absence would make any difference when every quasi-judicial or judicial authority is required to decide a question afresh, he has to independently apply his mind to the facts and circumstances of the case and the materials available on record. But however, to put the matters beyond any pale of doubt, we

proceed further and clearly make an observation by saying that the assessing authority shall now proceed further in the matter without in any manner being influenced by the observations contained in the order of remand passed by the Tribunal.

7. Third and final aspect of the matter which we are required to deal with is as to whether there was any opportunity of leading evidence afresh to the assessee, denied by the impugned order. We find that no such attempt was made by the Tribunal and it has not been done either. Therefore, the assessing authority will provide a fair and reasonable opportunity to the assessee to produce any evidence, all the more so, to the contra, insofar as the additional evidence let in by the Department/Revenue and consider the same before taking a final decision in the matter. Accordingly, T.C.(A).No.387 of 2007 stands disposed of. No costs.

T.C.(A).No.859 of 2007:

8. In view of the order passed by us in T.C.(A).No.387 of 2007 today as above, the issue in T.C.(A).No.859 of 2007 is purely academic and it does not require any answer from us. T.C.(A).No.859 of 2007 is accordingly disposed of. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To
1. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Chennai-600 090. (with records) (5 copies)

2. The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3. The Commissioner of Income Tax,
Tamil Nadu Circle, Chennai-600 034.

4. The Commissioner of Income Tax (Appeals)-III,
Tamil Nadu Circle, Chennai-600 034.

5. The Asst. Commissioner of Income Tax,
Company Circle-I(3), Chennai-600 034.

6. The Asst. Commissioner of Income Tax,
Company Circle-1(1), Chennai-600 034.

+1cc to Mr.T.Ravikumar, Advocate sr.25946

+2cc to Mr.S.Sridhar,Advocate sr.25925,25926

T.C.(A).Nos.387 and 859 of 2007

ad(co)
ss(6/6/2017)