

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2016

Coram:

The Hon'ble Mr.Justice **V.RAMASUBRAMANIAN**

and

The Hon'ble Mr.Justice **N.KIRUBAKARAN**

Tax Case Appeal No.960 of 2007

M/s. Macro Marvel Projects Ltd.,
"Gelneden Place",
813, P.H. Road,
Kilpauk, Chennai-600 010.

... Appellant

Versus

Assistant Commissioner of Income Tax,
Company Circle-IV (1),
121. Nungambakkam High Road,
Chennai - 600 034.

... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the Order dated 1.3.2007 passed by the Income tax Appellate Tribunal, Chennai 'B' Bench, Chennai in ITA No.129 /Mds./04.

For Appellant : Dr.Anita Sumanth
For Respondent : Mr.T.R.Senthilkumar, SC

JUDGMENT

(Judgment of the Court was made by V.Ramasubramanian, J)

This Tax Case Appeal is filed by the Assessee, under Section 260A of the Income Tax Act, 1961. It was admitted on 5.7.2007 on

the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the entire amount of repayment is not liable to be deducted in computing the income in the year of receipt itself?"

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that only 1/5th of the amount can be claimed as deduction in each of the five years?"

2. We have heard Dr.Anita Sumanth, learned counsel appearing for the appellant and Mr.T.R.Senthilkumar, learned Standing Counsel for the Department.

3. During the Assessment Year 1994-95, the appellant/assessee introduced a Fresh Novel Scheme known as "Money Back Novel Scheme" to the public. Under the said scheme, any person, who bought a plot of land from the appellant/assessee was assured of the return of the entire land cost upon the expiry of five years from the date of completion of sale. The assessee treated the sale of land as income and the incentive amounts payable as per the Bank Guarantee issued to the buyer of the plot as an expenditure payable on the due date. But the Assessing Officer passed an order to the effect that the amount repayable to the buyers of the plots should

be spread over a period of five years, since the liability to pay accrues only at the end of five years.

4. The assessee took the matter on appeal to the Commissioner of Income Tax (Appeals). The Appellate Commissioner called upon the appellant/assessee to provide details of one completed transaction of sale, so as to understand the scope of the dispute. Copies of the original pamphlet, allotment letter given to one of the buyers, the advance money taken from the buyer, bank guarantee issued in favour of the buyer, a copy of the registered sale document etc., were furnished by the appellant/assessee before the Commissioner.

5. After a perusal of all the documents, the Commissioner of Income Tax (Appeals) found on facts that the buyer in question had paid a plot cost of Rs.61,209/-, pursuant to an allotment letter dated 13.9.1993. The allottee of plot incurred expenditure towards Stamp Duty. Therefore, the total amount paid by the buyer of the plot was Rs.70,209/-. This amount was paid by the buyer to the assessee on 1.10.1993. Thereafter, the appellant/assessee deposited an amount of Rs.31,000/- as Fixed Deposit with Ind Bank Housing Limited in a Scheme known as "Money Multiplier Scheme". The Fixed Deposit was to mature on 25.2.1999, with the maturity amount indicated as Rs.62,186/-.

6. From the above facts, the Commissioner of Income Tax (Appeals) concluded that upon receipt of the entire sale consideration from the buyer of a plot, the assessee created a Fixed Deposit for a period of five years in a particular scheme in a bank, so that the maturity amount of what was deposited, equalled the amount collected towards the cost of the plot in the first instance.

7. In view of what was reflected from the facts, the Commissioner of Income Tax (Appeals) followed the decision of the Supreme Court in ***M/s Calcutta Company Limited v. Commissioner of Income Tax [37 ITR 1]*** and held that the appellant had incurred liability on the date on which the contract was entered into and hence they were entitled to claim the entire amount as expenditure.

8. But the Tribunal reversed the said decision of the Appellate Commissioner on the ground that what was applicable to the case on hand was the decision of the Supreme Court in ***M/s. Madras Industrial Investment Corporation Limited vs. Commissioner of Income Tax [225 ITR 802]***. In that view, the Tribunal reversed the decision of the Commissioner of Income Tax (Appeals). Hence the assessee is before us.

9. As rightly pointed out by the Commissioner of Income Tax (Appeals), the buyer of a plot of land was issued with a bank

guarantee, so that the cost of the plot paid by him is repaid by the bank, after the expiry of five years. In order to enable the bank to do this, the assessee creates a Fixed Deposit. Therefore, the Tribunal found that the liability was incurred immediately, but the payment was postponed.

10. But unfortunately, the Tribunal took a different view merely on the ground that the Fixed Deposit stood in the name of the assessee and not in the name of the buyer of the plot. This is completely a misconceived view, in view of the fact that two consequences would follow if the Fixed Deposit Receipt is taken in the name of the buyer of the plot. The first is that the interest accrued on the Fixed Deposit would be the income of the buyer of the plot. The buyers may not agree to such a course of action. The appellant/assessee has accounted for the interest accruing on the Fixed Deposit Receipts, as their own income and the same has been accepted by the Department. The second consequence that may flow out of the issue of Fixed Deposit Receipt in favour of the buyers of the plots is that they may foreclose the same and take away the proceeds even before the expiry of the period of five years. This may result in the bank not offering the benefit of a special scheme known as "Money Multiplier Scheme". Therefore, the Commissioner was right in holding that the decision of the Supreme Court in *M/s Calcutta*

Company Limited, would apply squarely to the facts of the case. The decision in *M/s Madras Industrial Investment Corporation Limited*, was rightly distinguished by the Commissioner of Income Tax (Appeals) but wrongly interpreted by the Tribunal.

11. Once it is clear that the liability arose on the date of the contract but what was postponed was only the payment, there is no escape from the conclusion that the assessee can claim the expenditure in the year of Fixed Deposit Receipt. Hence, the questions of law are answered in favour of the assessee.

12. In the result, the Tax Case Appeal is allowed.

(V.R.S., J) (N.K.K., J)
15.02.2016

Index : Yes or No
Internet : Yes or No

To
The Income tax Appellate Tribunal, Chennai 'B' Bench, Chennai.

V.RAMASUBRAMANIAN, J
AND
N.KIRUBAKARAN, J

T.C.(A) No.960 of 2007

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