IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

C O R A M

THE HON'BLE MR. JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Tax Case Appeal No.1421 of 2010

Commissioner of Income Tax III,
Chennai ... Appellant

Vs

M/s. Sriram Investments Ltd.,
Mookambika Complex,
III Floor, No.4 Lady Desika Road,
Mylapore, Chennai 600 004 .. Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai C Bench, dated 26.03.2010, in I.T.A.No.1612/Mds/2009. Against order passed by the income Tax Appellate Tribunal Chennai, Bench C Chennai made in ITA.No.1612/mbs/2009 for the assessment year 2005-2006 which was preferred against the order passed by the commissioner Income Tax appeals V, 121 Mahatma Gandhi Road, Chennai 600 034 made in ITA.No.332/2007-2008 dt.24.12.2008.

For Appellant : Mr. J.Narayanasamy
For Respondent : Mr. R.Sivaraman

J U D G M E N T

(Judgment of the Court was delivered by Anita Sumanth, J.,)

The above Appeal is preferred by the Revenue under Section 260 A of the Income Tax Act, 1961, (in short, ‘the Act’) calling in question the correctness of order dated 26.03.2010, passed by the Income Tax Appellate Tribunal, Chennai.

2. The following five substantial questions of law relating to the assessment year 2005-06 have been raised:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was

entitled to account for only the “additional finance charges” on a cash basis, while it was otherwise following the mercantile the system of accounting and also accounting for the very same transaction on a mercantile basis under the Company Law?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee could be permitted to follow the mercantile system of accounting for the purpose of Company Law and a Hybrid system for the purposes of Income Tax?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that additional finance charges could be shown for Income Tax purposes on receipt basis, though the assessee has accounted for the same in the regular accounts on accrual basis and therefore were not includible in the taxable business income, ignoring the special provisions contained in Section 43 D of the Income Tax Act and Rules made thereunder, specifying the classes of assessees and categories of bad and doubtful debts in respect of which such exclusion could be made?

4. Whether on the fact and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the dis-allowance of Long Term Capital Loss of Rs.3,98,07,218/- on account of sale of shares to a sister concern without applying the ratio of the Supreme Court's decision in the case of Aishini Least Finance P. Ltd., (309 I.T.R. 320)?

5. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision for the bad debts could not be added back while computing the book profits u/s 115JB in view of the retrospective amendment made by the Finance (2) Act, 2009 by the insertion of clause (l) in the explanation 1 to Section 115 JB?"

3. Heard Mr.J.Narayasamy, learned senior standing counsel appearing for the appellant and Mr.R.Sivaraman, learned counsel appearing for the respondent/assessee.

4. Learned counsel appearing for both sides agree that question Nos.1, 2 and 3 are covered by a decision of this Court, in T.C.A.No.1422 of 2010, of even date, in favour of the assessee and Question No.5, in favour of the Revenue and against the assessee.

Adverting to question No.4, the brief facts are as follows:-

The assessee / respondent is a Non Banking Financial Company engaged in the business of hire purchase, financing, leasing and investments. By virtue of guidelines issued by the Reserve Bank of India, Non Banking Financial Companies (NBFC) were required to concentrate on core financing business and exit from manufacturing and other activities. The assessee consequently wished to divest its shareholding in Shriram Auto Components (Madras) Limited (name changed to Rambal Limited) and Shripet Cybertech Systems Limited. The shareholding of the assessee in the aforesaid two companies was valued at the figure of Rs.1/- per share and the sale resulted in a capital loss of an amount of Rs.3.98 crores (Rs.2.88 + 1.10 crores).

5. During the course of assessment, the Assessing Authority raised a query on the allowance of capital loss on the sale of shares, specifically on the valuation adopted. The justification provided by the assessee in respect thereof reads thus:-

> 'The company is a manufacturer of Automobile components. We had acquired 10 lakhs shares in this company at a cost of Rs.100 lakhs in the year ended 30.03.99. The company had been incurring losses every year and had not declared any dividend since its inception in 1996. The accumulated debit balance in Profit & Loss Account as on 31.03.04 amounted to Rs.594 lakhs against the share capital of Rs.1288 lakhs. There was no return for us from the investment in the company. Further, due to the guidelines of Reserve Bank of India, we a Non Banking Financial Company had to concentrate on our core financing business and had to exit from manufacturing activities. There was no scope for the sale of these shares in market. In these circumstances, we had to sell these shares @ Rs.1 per share and exit from the company.
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> Shripet Cybertech Systems Limited has been manufacturing pet bottles and had made very insignificant profits till 31.03.03 and had not declared any dividend since its inception. In the year ended 31.03.04, it had incurred a huge loss of Rs.1,14,59,899/-. Due to loans, there has been erosion in share capital. We had acquired 683600 shares in this company for Rs.68,36,000/- during the year ended 30.06.96 and we had not received any return from this investment. Further due to the guidelines of Reserve Bank of India, we, a Non Banking Financial Company had to concentrate on our core financing business and had to exit from manufacturing activities. Though the equity shares of the company have been listed in the Madras and Ahmedabad Stock Exchanges, there were no

transactions in the stock exchanges since April 2002. Hence there was no market for the shares. In these circumstances, we had to sell the shares @ Re.1 per share and exit from that company.

6. The assessee thus explained that the two companies were either incurring loss or making insignificant profits and neither had declared dividend since inception. Thus, though the equity shares of one of the companies were listed in the Madras and Ahmedabad Stock Exchanges, there had been no transactions in the said stock exchanges since April 2002 and hence there is no market for the shares. The shares were thus valued nominally for a price of Re.1/- per share. The Assessing Authority did not dispute the factum of sale. The only query raised at the stage of assessment was in regard to the value adopted, at a figure of Re.1/-, as against the face value of Rs.10/- per share. He, thus, rejected the claim of long term capital loss, not permitting the assessee to carry forward and set off the same in future.

7. An appeal was filed before the Commissioner of Income Tax (Appeals) (in short 'the CIT (A)') that was allowed by order dated 24.12.2008, holding that the valuation adopted by the assessee appeared to be acceptable in the light of the justification offered by the assessee and also specifically noting that though the assessing officer rejected the valuation adopted by the assessee, he had not offered or arrived at any other alternative. The order of the CIT (A) was assailed before the Income Tax Appellate Tribunal, (in short, 'ITAT), which by order dated 26.03.2010 confirmed the same, reiterating the findings of the CIT (A) to the effect that the valuation was in order. The Tribunal particularly notes that though a suspicion had been raised by the Assessing Officer regarding the valuation of the shares, nothing was placed on record to substantiate such suspicion or provide a more acceptable alternative. It is, in this background, that the Revenue is now before this Court.

8. We are of the view that the Assessee had provided an acceptable justification for both transactions of sale of shares including the aspect of valuation of the shares. The Assessing Authority, while accepting the genuineness of the transactions, merely raises a vague suspicion relating to the valuation adopted by the assessee. This, by itself, is insufficient to reject the claim of capital loss. While the Assessing Officer is certainly entitled to question the valuation, he ought to have produced some materials to either disprove the justification offered by the assessee or to substantiate his doubts. A mere suspicion, however strong it might appear, cannot take the form of a substantiated opinion sans supporting materials and hence it cannot form the basis for rejection of the claim.

9. The Standing Counsel appearing for the Department relied upon a judgment of the Supreme Court, in Civil Appeal Nos.3343

and 3344 of 2008, dated 06.05.2008, in the case of Commissioner of Income Tax v. Ashini Lease Finance (P) Ltd., in support of his contention. On a perusal thereof, we find that the facts are distinguishable from the facts of the present case. The assessee, in that case, borrowed funds from its sister concerns, which were deployed towards purchase of equity shares in a company called AEC Ltd. Deduction of interest paid to the sister concerns was claimed. Investigations carried out by the Department revealed that the entire exercise was only to enable the take-over of AEC Ltd by the sister concerns and that the transaction was a mere sham. The assessing officer had marshaled sufficient facts to indicate that the assessee in that case was a mere conduit and recorded a finding to such an effect. It was in the aforesaid circumstances that the Supreme Court concluded that the transaction 'would indicate circular trading entered into solely with the idea of evading tax'. Such a finding based on factual records is conspicuous by its absence in the present case.

10. Further more, the question of valuation in itself, is a pure question of fact particularly, when the same has been concurrently accepted by both the lower appellate authorities. No perversity has been either alleged or made out at any stage in appeal. We agree with the conclusions of the ITAT and are of the view that no substantial questions of law arise for consideration.

11. In conclusion, substantial questions of law Nos.1 to 4 stand answered in favour of the Assessee and against the Revenue and substantial question of law No.5 stands answered in favour of the Revenue and against the Assessee. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commissioner of Income Tax III, Chennai

2 The Income Tax Appellate Tribunal Appeal V
121, Mahatma Gandhi, Road, Chennai

3 The Income Tax Appellate Tribunal, Chennai Bench
C Chennai

ssk(CO)
md(30/12/2016)