

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C (A) Nos.105 and 106 of 2017

Principal Commissioner of Income
Tax, Central 2, No.108, Mahatma
Gandhi Road, Chennai 600 034. .. Appellant in both
TCAs.

-vs-

M/s.Ennore Cargo Container Terminal
P. Ltd., No.144, Valluvar Village,
Kondakarai, SR Palayam,
Chennai 600 120. .. Respondent in both TCAs.

Appeals filed under Section 260A of the Income-tax Act, 1961, against the common order dated 12.05.2016 passed in I.T.A.Nos. 41/Mds/2016 and 42/Mds/2016 by the Income Tax Appellate Tribunal Madras 'D' Bench, for the Assessment Years 2007-08 and 2010-11 respectively preferred against order in I.T.A. Nos.666 & 667/2013-2014 dated 19.09.2014 passed by the commissioner of Income - Tax (Appeals) - III, Chennai, and against the Assessment order dated 31.03.2013 made in PAN.No.AABCE 4546 na on the file of the Assistant Commissioner of Income Tax Company Circle II (i), Chennai, for the year 2007-2008 & 2010-2011.

For Appellant : Mr.T.R.Senthil Kumar
For Respondent : Mr.S.Sridhar

COMMON JUDGMENT

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1.These are the appeals preferred by the Revenue against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench (in short 'the Tribunal'), dated 12.05.2016. The appeals

pertain to Assessment Years (AYs) 2007-08 and 2010-11 respectively.

2. Qua the captioned appeals, the Revenue has framed the following questions of law for consideration by this Court in respect of the aforementioned AYs:

For the Asst. Years : 2007-08 & 2010-11:

- i. Whether the Tribunal is correct in allowing deduction u/s. 80IA(4) on 'Container Freight Station' even after the amendment to Section 80IA(4) whereby Explanation was introduced w.e.f. 01.04.2002 had omitted the word 'any other public facility of similar nature'?
- ii. Whether the Appellate Tribunal is correct when the assessee had not developed the 'infrastructure facilities' as it was only a custodian for the movement and handling of all containerized import/export consignment in Container Freight Station ?

For the Asst. Year: 2007-08 :

- iii. Whether the Appellate Tribunal is correct in holding that deemed dividend has to be assessed only in the hands of the registered shareholders for whose benefit, the money was advanced ?
- iv. Whether Appellate Tribunal is correct in deleting the addition made towards deemed dividend on the ground that the assessee is not a registered shareholder of M/s. Indev Logistics Pvt. Ltd. from whom advance was received by the assessee-company for the benefit of the shareholders who are also the common shareholders, holding more than 10% of shares, in assessee-company as well as in M/s. Indev Logistics P. Ltd. ?'

3. Mr. Sridhar, who appears on behalf of the assessee, says that insofar as Question Nos. 1 and 2 are concerned, which are common to AYs. 2007-08 and 2010-11, they are covered by the judgment delivered by the Division Bench of this Court in the case of Commissioner of Income Tax vs. A.L. Logistics Pvt. Ltd., (2015) 374 ITR 609 (Mad.), and the judgment in the case of Commissioner of Income Tax vs. AL Logistics P. Ltd., (2016) 96 CCH 45 ChenHC.

3.1. As would be evident, the aforementioned judgments pertain to the same assessee, albeit, for different Assessment Years. Furthermore, a perusal of the aforementioned judgments would show that they have followed the view taken by the Delhi High Court in the matter of Container Corporation of India Ltd., vs. ACIT, (2012) 346 ITR 140 (Del.).

3.2.Mr.Senthil Kumar, who appears for the Revenue, says that insofar as the judgment of the Delhi High Court in the case of Container Corporation of India Ltd. is concerned, the matter was carried to the Supreme Court by way of a Special Leave Petition, which has been admitted and numbered. The learned counsel says that the appeal has been accorded the number: C.A.8900 of 2012.

3.3.Having regard to the aforesaid, we are of the view that the captioned appeals by the Revenue qua Question Nos.1 and 2 cannot be admitted. The two Division Benches of this Court have rejected the Revenue's appeals with regard to the similar questions of law. It is ordered accordingly.

4.Insofar as Question Nos.3 and 4 are concerned, the following brief facts are required to be noticed:

4.1.The assessee-company, evidently, received a capital advance in a sum of Rs.1,09,50,000/- from an entity by the name of Indev Logistics Pvt. Ltd. The assessee-company as well as the said entity, i.e.Indev Logistics Pvt. Ltd., admittedly have common shareholders. The shares in the assessee-company to the extent of 50% are held by Mr.Xavier Britto, while the balance shares are held by Smt.Vimalarani Britto. In so far as Indev Logistics Pvt. Ltd. is concerned, shares are held likewise by the said individuals, though in a different ratio. Mr.Xavier Britto holds 60% of the shares in Indev Logistics Pvt. Ltd., while Smt.Vimalarani Britto holds the balance 40% shares in the said entity.

4.2.The Revenue seeks to assess as income the capital advance received by the assessee-company from Indev Logistics Pvt. Ltd. on the ground that it is deemed dividend received by the assessee-company for the benefit of the registered shareholder. For this purpose, the provisions of Section 2 (22) (e) of the Income-tax Act, 1961 (in short 'the Act') is sought to be relied upon. The Tribunal has rejected the said contention of the Revenue, principally, on the ground that deemed dividend can only be assessed in the hands of the registered shareholder for whose benefit the money was advanced.

4.3.As indicated above, there is no dispute that the assessee did receive capital advance from Indev Logistics Pvt. Ltd. There is also no dispute that there are common shareholders both in the assessee-company and Indev Logistics Pvt. Ltd. Therefore, quite correctly, as noted by the Tribunal, though, the advance received by the assessee company may have been for the benefit of the aforementioned registered shareholders, it could only be assessed in the hands of those registered shareholders and not in the hands of the assessee-

company.

4.4. In our view, on a plain reading of the provisions of Section 2 (22) (e) of the Act, no other conclusion can be reached. As a matter of fact, a Division Bench of this Court, in the case of Commissioner of Income Tax vs. Printwave Services P. Ltd., (2015) 373 ITR 665 (Mad.), has reached a somewhat similar conclusion.

5. Mr. Senthil Kumar, however, contends to the contrary and relies upon the judgment of the Supreme Court in Gopal and Sons (HUF) vs. Commissioner of Income-tax, Kolkata-XI, (2017) 77 taxmann.com 71 (SC).

5.1. In our view, the question of law considered by the Supreme Court in the case of Gopal and Sons (supra) was different from the issue which arises in the present matter. The question of law which the Supreme Court was called upon to consider was whether loans and advances received by a HUF could be deemed as a dividend within the meaning of Section 2(22)(e) of the Act. The assessee in that case was the HUF and the payment in question was made to the HUF. The shares were held by the Karta of the HUF. It is in this context that the Supreme Court came to the conclusion that HUF was the beneficial shareholder.

5.2. In the instant case, however, both the registered and beneficial shareholders are two individuals and not the assessee-company. Therefore, in our view, the judgment of the Supreme Court does not rule on the issue which has come up for consideration in the instant matter.

6. Accordingly, in so far as Questions Nos. 3 and 4 are concerned, we find that no interference is called for with the view taken by the Tribunal via the impugned order. In these circumstances, the Revenue's appeal, i.e. T.C. (A) No. 105 of 2017, pertaining to AY 2007-08, with regard to the said questions, is dismissed.

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7.The Tax Case Appeals are, accordingly, dismissed. There shall be, however, no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

1.The Asst. Registrar,
Income Tax Appellate Tribunal
Madras 'D' Bench, Chennai.

2.The Commissioner of Income-tax
(Appeals) - II, 121, Mahatma
Gandhi Road, Nungambakkam,
Chennai 600 034.

3.The Asst. Commissioner of Income Tax
Company Circle II(1), Chennai.

+1cc to Mr.T.R. Senthil Kumar, Advocate, S.R.No.18879
+1cc to Mr.S. Sridhar, Advocate, S.R.No.19317

nri(CO)
md(12/04/2017)

T.C. (A) Nos.105 and 106 of 2017

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