

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI**

I.T.T.A. NO.207 OF 2005

DATED:14-11-2017

Between:

Smt Rama S. Gummadi

...Appellant

And

The Commissioner of Income Tax (Central),
Basheerbagh, Hyderabad.

... Respondent

COUNSEL FOR THE APPELLANT: Dr. C.P. Ramaswamy

COUNSEL FOR THE RESPONDENT: Sri K. Raji Reddy
Standing Counsel for
Income Tax Department



THE COURT MADE THE FOLLOWING:

JUDGMENT: (per the Hon'ble Sri C.V. Nagarjuna Reddy)

This Appeal is filed against order dated 14.3.2005 in I.T.A.No.290/ Vizag/ 2001 on the file of the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam (for short, "the Tribunal") raising the following substantial questions of law:-

- "1. Whether on the facts and in circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the deletion of Section 47(ii) relating to dissolution of partnership would make retirement from partnership into a transfer for the purpose of capital gains tax even where the firm continues?
2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in charging to tax the amount received by the appellant on retirement from the partnership as capital gains despite the decision to the contrary by the jurisdictional High Court, which was confirmed by the Apex Court?"

We have heard Dr. C. P. Ramaswamy, learned counsel for the appellant and Mr. K. Raji Reddy, learned senior standing counsel for the Income Tax Department.

The appellant-assessee was a partner in a partnership firm. She has retired from the partnership firm with effect from 31.03.1995. As per the retirement deed, the assessee was having a net debit balance of Rs.28,778/- . The appellant was paid a lump sum of Rs.12,28,778/- as consideration for the retirement under a written agreement. This debit balance of the retired partner was subsequently apportioned to the continuing partners in their profit sharing ratio on 31.3.1996. The shares of the retiring partner, were taken in equal shares by the incumbent partners. As against the debit balance of Rs.28,778/- , the assessee was paid an amount of Rs.12,28,778/- . The Assessing Officer treated the receipt of the appellant-assessee as long term capital gains and levied tax of Rs.9,84,119/- . Assailing the same, the assessee has filed an

appeal before the Commissioner of Income Tax (Appeals)-V, Hyderabad (CIT(A)) who after making suitable deductions has assessed the net tax payable at Rs.6,93,600/-. By order dated 29.5.2001, CIT(A) allowed the appeal following the judgment of this Court in CIT vs. L. Raghu Kumar¹. Aggrieved thereby Revenue has carried the matter in appeal before the Tribunal. By its order dated 14.3.2005, the Tribunal has allowed the said appeal. In doing so, the Tribunal has placed reliance on the judgment of the Bombay High Court in N.A. Mody vs. CIT². The judgment of the Apex Court in Commissioner of Income Tax vs. R. Lingamallu Raghukumar³ which arose out of the judgment of this Court in CIT vs. L. Raghu Kumar (1 supra) was placed before the Tribunal. The Tribunal distinguished the said judgment by holding that the same relates to a case pertaining to the period prior to deletion of Clause (ii) of Section 47(ii) of the Income Tax Act, 1961 (for short, "the Act").

At the hearing Dr. C.P. Ramaswamy, learned counsel for the appellant has submitted that the Tribunal has committed a serious error in not following the judgment in R. Lingamallu Raghukumar (3 supra) on the purported ground of deletion of Clause(ii) of Section 47 of the Act. He has submitted that the facts in R. Lingamallu Raghukumar (3 supra) and in the present case are similar, inasmuch as in both the cases, the assessee has retired from the partnership firm while the partnership firm has continued and that in the absence of dissolution of the partnership firm, the deletion of Clause (ii) of Section 47 of the Act had no relevance.

A careful perusal of the facts in Lingamallu Raghukumar (3 supra) reveals that the assessee was a partner and retired from the partnership firm after receiving the excess amount of Rs.46,500/-. This

¹ (1983) 141 ITR 674

² 162 ITR 420

³ (2001) 247 ITR 801

Court in *Lingamallu Raghu Kumar* (1 supra) held that there was no transfer of any assets defined in Clause (ii) of Section 47 of the Act. In arriving at this conclusion, this Court had relied upon the judgment of the Gujarat High Court in *CIT vs. Mohanbhai Pamabhai*⁴. Referring to the above facts, the Supreme Court observed that the judgment of the Gujarat High Court in *CIT vs. Mohanbhai Pamabhai* (4 supra) was affirmed by the Supreme Court in *Additional Commissioner of Income Tax vs. Mohanbhai Pamabhai*⁵ and accordingly confirmed the judgment of this Court.

As regards the reason on which the Tribunal has distinguished the judgment in *Lingamallu Raghukumar* (3 supra), Section 45 deals with capital gains. Section 47 deals with transactions not recorded as transfer. It enumerated different types of transfers which are not recorded as transfer. One such transfer by way of disbursement of capital assets on the dissolution of a firm, body of individuals or other association of persons is included in Clause(ii) thereto. It is no one's case that the appellant has received her share consequent on dissolution of the partnership firm. Therefore, Section 47(ii) of the Act which was subsequently deleted, had no relevance whatsoever in deciding the issue pertaining to the appellant. Indeed neither, this Court nor the Supreme Court in *Lingamallu Raghukumar* (3 supra) was concerned with the said provision at all. The Tribunal has committed a serious error in seeking to distinguish the case on hand with the facts in *Lingamallu Raghukumar* (3 supra). In our opinion the judgment in *Lingamallu Raghukumar* (3 supra) applies in all fours to the case on hand as the facts in both the cases are similar.

⁴ (1973) 91 ITR 393 (Guj)

⁵ (1987) 165 ITR 166

In the light of the ratio in *Lingamallu Raghukumar* (3 *supra*), the order of the Tribunal is not sustainable and the same is accordingly set aside. The questions of law raised in this appeal are accordingly answered in favour of the appellant-assessee.

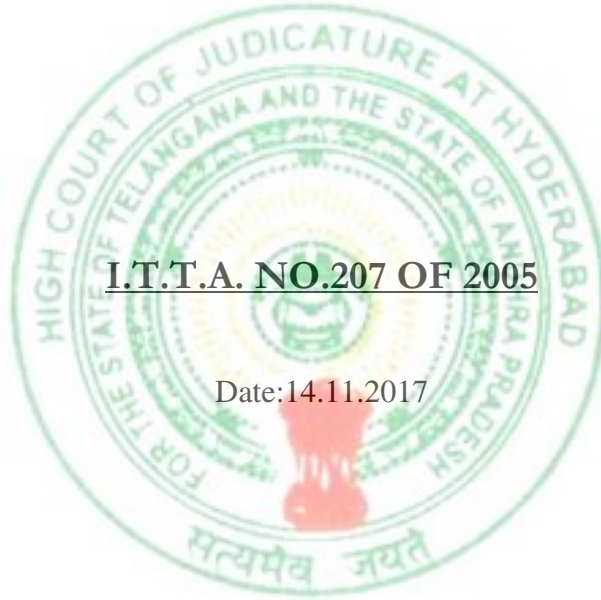
C.V. NAGARJUNA REDDY, J

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