IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.109 of 2009

The Commissioner of Income-tax,
Tamil Nadu-III, Madras. ... Appellant

-vs-

1.Mr.R.K.Swamy (Deceased)
2.Smt.Radha Swamy
3.Sri.Srinivasan K.Swamy
4.Sri.Narasimhan K.Swamy
5.Smt.Vathsala Ravindran
6.Smt.Vimala Ramanan
7.Smt.Kamala Santhanaraman
8.Smt.Bhooma Parthasarathy ... Respondents

(Respondents - 2 to 8 brought on record as legal representatives of the deceased sole respondent vide order of Court dated 22.12.2008, made in TCMP.42 of 2008 in T.C.SR No.7256 of 2003)

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Chennai Bench 'C', dated 08.01.2003 passed in I.T.A.No.257(Mds)/2002 for the assessment year 1997-98. Appeal filed against the order of the Commissioner of Income Tax (Appeals)V 121, Mohatma Gandhi Road, Chennai 600 034, dated:07/03/2002 in ITA.No.736-K /01-02 in PAN.GI No.774 against the Proceedings of the Assistant Commissioner of Income Tax company circle-V(4) Chennai -34 dated 24/03/2003 in GIR No.154RK.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel

For Respondents : Mr.A.S.Sriraman

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, filed by the Revenue under Section 260-A of the Income Tax Act, 1961, is directed against the order of the Income-tax Appellate Tribunal, Chennai Bench 'C', dated 08.01.2003, passed in I.T.A.No.257(Mds)/2002 for the assessment year 1997-98.

2. The appeal has been admitted, on 23.03.2009, on the following substantial questions of law:

> "(i) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the non-compete fees of Rs.3.02 crores received by the assessee was a capital receipt is valid in law?
>
> (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that non-competing fee of Rs.3.02 crores could not be tax under Section 28 (ii)(a) of the Act is valid in law?"

3. Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant and Mr.A.S.Sriraman, learned counsel for the respondents.

4. As noticed above, the assessment year under question is 1997-98. The issue to be decided is whether payment under an agreement not to compete is a capital receipt or a revenue receipt. This question was considered by the Hon'ble Supreme Court in the case of Guffic Chem (P) Ltd., vs. Commissioner of Income Tax and Another, (2011) 332 ITR 0602, and it was held that payment received as non-competition fee under a negative covenant has to be treated a as capital receipt till assessment year 2003-04, as Section 28(va) is not clarificatory and hence, not retrospective. The Hon'ble Supreme Court having answered the question against the Revenue, the said decision fully applies to the case on hand.

5. Accordingly, the appeal filed by the Revenue is dismissed and the substantial questions of law are answered in favour of the assessee/respondents. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsg/abr

To

1.The Income-tax Appellate Tribunal,
Chennai Bench 'C'.

2.The Assistant Commissioner of Income Tax,
Chennai-34.

3.The Commissioner of Income Tax,
Tamilnadu III, Chennai.

4.The Commissioner of Income Tax Appeals,
Chennai.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.79231

+1cc to Mr.S.Premalatha, Advocate, S.R.No.79848

T.C.(A).No.109 of 2009

KS(CO)
GSP(21/12/2018)