IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.461 and 462 of 2009

Income Tax Officer
Ward III (2) Chennai/
Assistant Commissioner of Income Tax,
Circle III, Chennai.
.... Appellant in the above T.C.As

Vs.

Shri.Balagopal Menon
.... Respondent in T.C.(A)No.461 of 2009

Shri.Ashok Giri
.... Respondent in T.C.(A)No.462 of 2009

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 05.09.2008 made in ITA Nos.764/Mds/2008 & 2598/Mds/07 and I.T.A.Nos.765/Mds/2008 & 2599/Mds/07 for the assessment years 2001-02 and 2002-03. against the proceedings of the Commissioner of Income Tax (Appeals)VIII, Chennai in PAN/GIR.No.AAFPM 2485G/ITA.No.31/2007-08 dated 30.01.2008 and PAN/GIR.No.AACPA 4186F/ITA.No.30/2007-08 dated 30.01.2008 against the order of the (Income Tax Department) Income Tax Officer Business Ward III(3), 4th Floor, Chennai dated 20.12.2007 for the Assessment Year 2001-2002.

For Appellant : Mr.T.R.Senthil Kumar
Sr. Standing Counsel

For Respondent : Mr.N.V.Balaji

C O M M O N J U D G M E N T
(Delivered by DR.ANITA SUMANTH,J)

These appeals relate to the Assessment Year 2001-02 and 2002-03. Though the Revenue has raised three substantial questions of law, we find that only the two questions of law extracted below have been admitted by order of this Court dated 07.07.2009:

> '(i). Whether complete severance of relationship is an essential criterion for non compete agreements or not?
>
> (ii). Whether the restrictive covenant by the assessee is sham and not genuine transaction as per the case law EID PARRY (I) LTD. (2002) Madras High Court or not?

2. At the time of final hearing before us, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the Revenue and Mr.N.V.Balaji, learned counsel appearing for the assessee concur on the position that the order of the Tribunal dated 05.09.2008 also gives rise to the following substantial question of law and hence we admit the same as well.

> 'Whether the introduction of section 28(va) in the Statute expressly indicates the intention of the legislature to tax non compete receipts irrespective of the assessment year or not?'

3. As far as the first and second substantial questions of law are concerned, the same turn upon factual issues and in the light of the concurrent findings of fact in this regard by the first and second Appellate Authorities and since there is no averment to the effect that the findings are perverse, no interference is warranted. We place reliance in this regard upon the judgment of the Supreme Court in the case of Income Tax Officer V. Mohanakala (291 ITR 278)(SC). Accordingly substantial question Nos.(i) and (ii) are answered in favour of the assessee and against the Revenue.

4. Both learned counsel agree and jointly submit that the substantial question of law relating to the taxability of non-compete fee in terms of section 28(va) of the Income Tax Act is covered by the judgment of the Supreme Court in the case of Guffic Chem (P.) Ltd. V. Commissioner of Income tax [2011] 332 ITR 602 (SC).

5. As per the aforesaid judgment, with the introduction of clause (va) to section 28 of the Income Tax Act with effect from 01.04.2003, non-compete fees received after 01.04.2003 would constitute revenue receipts taxable in the hands of the recipient. Such receipts prior to 01.04.2003 would constitute capital receipts.

6. Substantial question of law No. (iii) is also answered in favour of the assessee and against the Revenue.

7. In the upshot, both the Tax Case (Appeals) are dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sl

To

1. The Income Tax Appellate Tribunal,
   Madras 'A' Bench, Chennai

2. The Commissioner of Income Tax,
   (Appeals)-VIII, Chennai.

3. Assistant Commissioner of
   Income Tax Circle-III,
   Chennai-34.

TCA Nos.461 and 462 of 2009

RK(CO)
CS/09/01/2019