IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

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

Tax Case Appeal No.951 of 2009

Commissioner of Income Tax
Chennai - III.
.... Appellant

Vs.

M/s.Shriram Chits & Inv. Pvt. Ltd.,
(Now known as Shriram Financial
Services Holdings P. Ltd.,)
149, Greams Road,
Chennai - 600 006.
.... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 18.02.2009 made in ITA No.808/Mds/2008 for the assessment year 1995-96, against the order of the Commissioner of Income Tax (Appeals)V, Chennai-34, dated 26.11.2007 made in ITA No.265/2006-07 arising out of the assessment order of the Income Tax Officer (OSD), company Circle VI(2), Chennai, dated 27.06.2006.

For Appellant : Mr.T.R.Senthil Kumar
Sr.Standing Counsel
assisted by Ms.K.G.Usha Rani

For Respondent : Mr.R.Sivaraman

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 18.02.2009 made in ITA No.808/Mds/2008 for the assessment year 1995-96 by raising the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) deleting the penalty levied under section 271(1)(c) of the Income Tax Act by the Assessing Officer on the ground that the difference arose onlyon account of the change in method of accounting adopted by the assessee even though the Appellate Tribunal had clearly held that the method adopted by the assessee was contrary to thep rovisions of the Chit Fund Act and the commission income in question constituted trading receipts of the year under consideration?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not considering the ratio of the decision of the Supreme Court in 306 ITR 277, wherein the Supreme Court has held that wilful concealment was not an essential ingredient for attracting the liability for penalty under section 271(1)(c) which was a civil liability, unlike in the matter of prosecution under section 276 C of the Income Tax Act?”

2. When the matter is taken up for consideration, both learned counsel at Bar submitted that the Co-ordinate Bench of this Court has already dismissed the appeal filed by the Revenue in the case of the same assessee (Commissioner of Income Tax III, Chennai V. M/s.Sriram Chits Tamil Nadu P. Ltd. T.C.(A)No.55 of 2010 dated 17.06.2013) in which the Coordinate Bench held as under:

'5. We do not agree with the submission of the learned Standing Counsel appearing for the Revenue, particularly in the context of the discussion on the role of a foreman and the acceptance of the case on the dividend under the provisions of the Income Tax Act. Thus, going by the reasoning given in the order dated 30.09.2012 in T.C.(A)Nos.141 and 213 of 2004 and batch cases that, on the mere fact that the assessee had given up the plea of mutuality, one cannot immediately draw an inference that the assessee was lacking in bona fides in the matter of its claim.

6. In similar situation, in the decision reported in [2010] 327 ITR 510 (Del.) (Commissioner of Income-tax v. Zoom Communication P. Ltd.) the Delhi High Court brought out the distinction between a claim made with bona fide intention and a claim which lacked bona fides, in the context of a deduction claimed under the provisions of the Income Tax Act. Agreeing with the

decision of the Delhi High Court reported in [2010] 327 ITR 510 (Del.) (Commissioner of Income-tax v. Zoom Communication P. Ltd.) and the law laid down by the Supreme Court in the decision reported in [2010] 322 ITR 158 (CIT V. Reliance Petroproducts P. Ltd.) and 2009 (238) ELT 3 (SC) (Union of India V. Rajasthan Spinning & Weaving Mills), we have no hesitation in rejecting the Revenue's plea, thereby confirming the orders of the Tribunal.'

3. In view of the aforesaid, the present appeal of the Revenue is dismissed in the same terms. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax,
Chennai-111.

3.The Commissioner of Income Tax (Appeals V)
121, Mahatma Gandhi Road,
Chennai-34.

4.The Income Tax Officer (OSD),
Company Circle VI(2),
Chennai.

+1cc to M/S.R.Sivaraman, Advocate Sr.81552
+1cc to M/S.T.R.Senthilkumar, Advocate Sr.81302

TCA No.951 of 2009

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srg 24/12/2018