

In the High Court of Judicature at Madras

Dated : 05.9.2018

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1328 of 2008

The Commissioner of Income-tax,  
Chennai ...Appellant  
Vs

1.Dr.M.A.M.Ramaswamy (deceased)

2.Mr.M.A.M.R.Muthiah,

(R2 impleaded as the legal heir as per  
memo filed today i.e. dated 05.9.2018  
& taken on record in this order) ...Respondents

TAX CASE APPEAL under Section 260A of the Income Tax Act, 1961 against the order of the  
Income-tax Appellate Tribunal, Madras [B] Bench, Chennai dated 07.3.2008 in ITA  
No.2617/Mds/2005 for the assessment year 2002-03.

For Appellant : Mr.T.R.Senthil Kumar, SSC for  
Ms.K.G.Usharani  
For Respondent-2 : Mr.M.P.Senthil Kumar

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal, by the Revenue, has been directed against the order passed by the Income-tax Appellate Tribunal, Madras [B] Bench, Chennai dated 07.3.2008 in ITA No.2617/Mds/2005 relating to the assessment year 2002-03.

2. The learned Senior Standing Counsel for the Revenue has filed a memo dated 05.9.2018 ie. today reporting about the demise of the sole respondent/assessee and in his place, he seeks to implead his son as necessary contesting respondent.

3. The memo filed by the Revenue is placed on record and the legal heir of the deceased assessee is impleaded as the second respondent in this appeal.

4. The appeal has been admitted on 21.8.2008, on the following substantial question of law:-

[Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the loss sustained in business can be set off against betting and gambling income; and only the net

income is to be taxed under Section 115-BB?

5. It is seen that an identical question of law, for the assessment year 1998-99, was considered by the Division Bench of this Court in CIT Vs. Dr. M.A.M.Ramaswamy (T.C.A.No.649 of 2006 dated 10.12.2014). In the said decision, the appeal filed by the revenue was allowed and the substantial question of law was answered in favour of the Revenue and against the assessee. The operative portions of the said decision read as follows:-

¶11. From the above, it is clear that the intent of the legislature, as a measure of rationalization, was to reduce the rate of tax on such winnings from 40% to 30%, with effect from 1.4.2002. Even though the said amendment is not applicable to the case of hand, what can be deduced from the same is the fact that the higher rate of tax as applicable to winnings from betting, etc. has been brought down to 30%, on a par with the rate applicable for other incomes as a measure of rationalization. Therefore, the intent of the legislature to levy tax at the rate of 40% for the relevant assessment year on the winnings from betting, etc. is apparent as otherwise, the very existence of the said provision in the Act would be meaningless.

12. On a careful perusal of the above provisions of law and the legislative intent, this Court is not inclined to accept the view as propounded by the Tribunal and the Commissioner (Appeals), as Section 115BB of the Act is a standalone special provision, which makes it clear that income of an assessee, not being income from activity of owning and maintaining race horses, would fall under Section 115BB of the Act. In view of the specific provision contained in Section 115BB of the Act under Chapter XII of the Act, which provides for determination of tax in certain special cases, the special rate of tax is applicable for the entire income of winnings from horse racing and should be subject to tax at the special rate provided therein. It is not the case of the assessee that the income being brought to tax is earned from owning and maintaining the horses. Therefore, in our considered opinion, the provisions of Section 58(4) of the Act will not come into play.

13. The methodology of computing tax on Long Term Capital Gain vis-a-vis Section 112 of the Act for which the assessee relied on the CBDT Circular No.721 dated 13.9.95, though found favour with the Commissioner of Income Tax (Appeals), this Court is not inclined to accept the same for the simple reason that whenever tax is levied based on special provisions envisaged under the Act, the method of calculating tax has to be strictly in accordance with such provisions and not otherwise. If the circular relied on by the assessee is taken into consideration, then what is envisaged by the statute would be given a go-by and the purport and intent of the Parliament in enacting that special provision in the statute would become a futile exercise. Therefore, the reliance placed on the said circular by the Commissioner of Income Tax (Appeals) as also by the Tribunal is misconceived and does not stand legal scrutiny.

14. Further, it is curious to note that the Tribunal, in the penultimate paragraph of its order, while observing that [Section 58(4) with its proviso clause does not apply to the assessee's case, the assessee being the owner of horses maintained by him for running in horse races], has held that the [A combined reading of Section 115BB and the proviso to section 58(4) along with the CBDT circular no.721 dated 13.09.1995 fortify the action of the Commissioner (Appeals) and we see no justification to interfere with the orders of the Commissioner (Appeals) on this issue]. We are at a loss to understand as to how the Tribunal concurred with the decision of the Commissioner of Income Tax (Appeals), while making a diametrically opposite observation that Section 58(4) of the Act is not applicable.

15. We are, therefore, of the considered view that the total winnings from betting of the assessee should be brought to tax at the rate of 40% as contemplated under Section 115BB of the Act. The order passed by the Tribunal, which affirmed the order of the Commissioner of Income Tax (Appeals), is liable to be set aside. Accordingly, the order passed by the Tribunal is set aside. For the foregoing reasons, this appeal is allowed answering the question of law in favour of the Revenue and against the assessee.¶

6. The learned Senior Standing Counsel for the Revenue points out that even for the subsequent assessment year in T.C.No.407 of 2008, the Division Bench followed the decision in T.C.A.No.649 of

2006 and allowed the appeal filed by the Revenue.

7. Thus, considering the above referred decisions where identical substantial question of law was decided in the assessee's own case, the appeal filed by the Revenue is allowed the substantial question of law is answered in favour of the Revenue and against the assessee. No costs.

05.9.2018

Internet : Yes

To

The Income-tax Appellate Tribunal, Madras [B] Bench, Chennai.

RS

T.S.SIVAGNANAM,J

AND

V.BHAVANI SUBBAROYAN,J

RS

TCA.No.1328 of 2008

05.9.2018