IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2018

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

T.C.(A). No.58 of 2010
and
M.P.No.1 of 2010

Commissioner of Income Tax III,
Chennai. .. Appellant

vs.

M/s.Sriram Chits and Investments P. Ltd.,
Greams Dugar, 4th and 5th Floor,
No.149, Greams Road,
Chennai - 6. .. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai dated 26.06.2009 passed in I.T.A.No.2118/Mds/2006.

Appeal against the order of the Commissioner of Income Tax Appellants V, Chennai in ITA.No.4/2007 -08 against the proceedings of the Income Tax Officer, (OSD), Company circle VI (2) Chennai in PAN AABCS/2726 B/GIR No. SH.145.

For Appellant : Mr.T.R.Senthil Kumar
and Mr.S.Rajesh

For Respondent : Mr.R.Sivaraman

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The Revenue is on appeal by raising the following substantial question of law in respect of the assessment year 2002-2003:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) cancelling the penalty levied under Section 271(1)(c)?"

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.Learned counsel appearing for the appellant would submit that against the common order passed by the Tribunal involving the assessee itself with respect to the assessment year 2000-2001, this Court in T.C.A.No.55 of 2010, by order dated 17.06.2013, has 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.
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> 6.In similar situation, in the decision reported in (2010) 327 ITR 510 (Del.) (Commissioner of Income Tax Vs. Zoom Communication P. Ltd.) the Delhi High Court brought out the distinction between a claim made with a 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 410 (Del.) (Commissioner of Income Tax Vs. Zoom Communication P. Ltd.) and the law laid down by the Supreme Court in the decision reported in (2010) 322 ITR 158 CIT Vs. Reliance Petroproducts P. Ltd.) and 2009 (238) ELT 3 (SC) (Union of India Vs. Rajasthan Spinning & Weaving Mills), we have no hesitation in rejecting the Revenue's plea, thereby confirming the orders of the Tribunal.
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> 7.In the result, the Tax Case Appeal stands dismissed. No costs."

4.In such view of the matter, this Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
"D" Bench, Chennai.

2.The Commissioner of Income Tax V,
Chennai.

+1cc to MR.T.R.Senthilkumar, Advocate Sr.No.39395

KS(CO)
sm:5.7.2018

T.C.(A).No.58 of 2010