In the High Court of Judicature at Madras

Dated : 18.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case (Appeal) Nos.830 & 831 of 2018

Shri Sirish Kumar Bafna
...Appellant in the above T.C.As

Vs

The Assistant Commissioner of Income Tax
Business Circle-XII
Chennai-600 006.
...Respondent in the above T.C.As

APPEALS under Section 260-A of the Income Tax Act, 1961 against the order dated 28.07.2017 passed by the Income Tax Appellate Tribunal, Madras "B" Bench in I.T.A.No.1034/MDS/2016 for the assessment year 2010-11 and the order passed by the Tribunal dated 16.02.2019 in M.P.No.330/Chny/2017 which was filed by the assessee to recall the order dated 28.07.2017.

For Appellant : M/S. S. Sridhar
A.S.Sriraman

For Respondent : Ms. R.Hemalatha, SSC

Common Judgment was delivered by T.S.SIVAGNANAM,J

These appeals by the assessee are filed under Section 260-A of the Income Tax Act, 1961 against the order dated 28.07.2017 passed by the Income Tax Appellate Tribunal, Madras "B" Bench in I.T.A.No.1034/MDS/2016 for the assessment year 2010-11 and the order passed by the Tribunal dated 16.02.2019 in M.P.No.330/Chny/2017 which was filed by the assessee to recall the order dated 28.07.2017.

2. Heard Mr.A.S.Sriraman, learned counsel for the appellant and Ms.R.Hemlatha, learned Senior Standing Counsel for the respondent/Revenue.

3. The assessee filed the appeal before the Tribunal challenging the assessement of interest income based on the tax deduced at source (TDS) effected for the broken period, namely, up to the end of the financial year relating to the assessment year under consideration.

4. The assessee's case is that the Assessing Officer as well as the Commissioner of Income Tax Appeals overlooked the terms and conditions of the deposits especially fixed deposits with the banks read with the accepted/consistent method of accounting followed by the assessee in

reckoning revenue for tax purpose.

5. It is further stated by the assesse that the term deposit envisaged the right to receive interest on the principal amount only at the time of maturity/expiry of the term and the concept of reckoning income both in cash system of accounting and accrual system of accounting should be noted as different from the liability to deduct tax at source.

6. It is the case of the assessee that the liability to deduct tax at source should be created statutorily at the time of making the payment of interest or crediting the account of the recipient including the suspense account as per Section 194A of the Act and accordingly, the banker deducted the tax at source in the assessee's case and duly reflected in form No.26AS.

7. The Tribunal by the impugned order dated 28.07.2017 rejected the stand taken by the assessee. After the order was passed, the assessee filed Miscellaneous Petition before the Tribunal reiterating the stand that the assessee has offered TDS deducted on the income in the previous year relating to the assessment year under consideration and claimed the TDS paid as tax paid on his behalf.

8. The assessee further contended that in the system of accounting regularly maintained by the assessee, namely cash system of accounting, the

interest under dispute even though credited to the suspense account by the banker, the reckoning of income is wrongly confirmed overlooking the terms and condition of the term deposits. Further, the assessee contended that the right to receive interest would get crystallized at the expiry of the term of the deposit and even in the accrual system of accounting there is no right to receive such interest just because the interest amount is credited to the account of the assessee/suspense account. There is no right to withdraw such amount during the term/period of the deposits.

9. Further the assessee pointed out that the crediting of interest in the assessee's suspense account could not be equated to constructive receipt and the constructive receipt theory should be presumed only based on the terms of the time deposit. Further the right to receive/withdraw amount at the end of the term as per the contracted terms and conditions of the term deposit, the right to receive the interest would get postponed to the date of maturity and in such circumstances, the reckoning of income both under cash system of accounting and accrual system of accounting should ordinarily get postponed to the date of maturity.

10. Therefore, the assessee contended that as per the terms and conditions of the term deposit, the right to receive the interest and the principal would get crystallized at the end of the term of the respective

deposits and the assessee has offered the interest income of the respective deposits on the maturity/end of the term of such deposits which happened to be the subsequent assessment year. Before us, the assessee has placed reconciliation statement which is as follows:

1. STATE BANK OF INDIA

Opening balance of cumulative deposits 01.04.2009	58,00,000	
Additional cumulative deposits made in FY 2009-10	30,00,000	
Total	88,00,000	
Deposits matured during FY 2009-10	24,00,000	
	64,000	4,00,000 Matured on 20.09.2011 with interest Rs.112054 offered for AY 2012-13
		30,00,000 Matured on 19.12.2011 with interest Rs.694794 offered for AY 2012-13
		30,00,000 Matured on 29.12.2011 with interest Rs.693999 offered for AY 2012-13

Assessment Year 2010-11

Interest received on deposits matured during the year	2,00,000
TDS deducted by bank	433
TDS on Rs.5,69,830, accrued but not due interest	56,983
	2,57,801
Less interest charged by the bank	3,663
Interest income offered in return of income	Rs.2,54,138

2. Dena Banks

Opening balance of cumulative deposits 01.04.2009	15,10,000
Additional cumulative deposits made in FY 2009-10	9,00,000
Total	24,10,000
Deposits matured during FY 2009-10	0
Balance	24,10,000

15,00,000 Matured on 05.02.2011 with interest Rs.251998 offered for AY 2011-12

9,00,000 Matured on 29.03.2011 with interest Rs.132671 offered for AY 2011-12

Assessment Year 2010-11

Interest received during the year on matured deposits	994
TDS deducted	0
TDS on Rs.2,06,136, accrued but not due interest	20,913
Interest income offered in return of income Rs.	21,907

11. In our considered view the matter requires fresh examination, in the light of the fact that the amount which have been matured along with interest had been offered to tax during different period for the assessment years 2012-13 and 2011-12. Though this aspect was pointed out to the Tribunal by way of the Miscellaneous Petition, the Tribunal pointed out that this mistake pointed out by the assessee is not apparent on the record to revise the order of the Tribunal by following the decision of this Court in the case of ***Express Newspapers Ltd. Vs. DCIT*** **[reported in (2010) 320 ITR 12 Madras]**.

12. The above reconciliation given by the assessee, in our considered

view, needs to be looked into because the matured amount along with interest has been offered to tax during the relevant assessment year. Thus for the above reason we are inclined to remand the matter to the Assessing Officer for fresh decision.

13. Accordingly, the appeal of the assessee is allowed and the matter is remanded back to the Assessing Officer for fresh decision, after affording an opportunity to the assessee. The Assessing Officer shall consider the reconciliation offered by the assessee and take a fresh decision on merits and in accordance with law. Consequently, the Substantial Questions of Law are left open.

(T.S.S.J.) (N.S.K.J.)
18.12.2018

Speaking (or) Non Speaking Order
Index : Yes (or) No
Internet : Yes (or) No

To,
The Assistnat Commissioner of Income Tax
Business Circle-XII
Chennai-600 006

ska/mrn

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AND
N.SATHISH KUMAR,J

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