IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM

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

Tax Case No.1351 of 2007

Commissioner of Income Tax
Chennai.
.... Appellant

Vs.

Mrs.C.Rajini
19/1 Third Cross Street,
R.A.Puram, Chennai - 600 028.
.... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 09.03.2007 made in ITA No.2705/Mds/2005 for the assessment year 2002-03 against the order of the Commissioner of Income Tax (Appeals)-I, Chennai - 34, dated 31.08.2005 made in ITA No.30/2005-06 against the order of the Assistant Commissioner of Income Tax, Central Circle -IV (3), Chennai dated 31.03.2005 made in PAN/G.I.No.AACPR3236P/717-R for the Assessment year 2002-03.

For Appellant : Mr.T.Ravikumar
Sr.Standing Counsel

For Respondent : Mr.A.S.Sriraman
for Mr.S.Sridhar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this Tax Case Appeal under section 260 A of the Income Tax Act, 1961 (in short 'Act') aggrieved by the order passed by the Income Tax Appellate Tribunal, Madras dated 09.03.2007 dismissing the Revenue's appeal for the Assessment Year 2002-03.

2. The following substantial questions of law which were admitted in the present appeal are quoted below for ready reference:

> "1.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the provisions of sec.2(22)(e) treating a loan or advance as a deemed dividend does not apply if the loan is given as part of a contractual obligation?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in interpreting the section on the basis of intention of the legislature, when the words of the section are clear and unambiguous?
>
> 3. Whether on the facts and circumstances of the cae, the Tribunal was right in looking at the transaction between the two companies in other years to arrive at the conclusion that the loan granted in the relevant financial year does not amount to deemed dividend under section 2(22)(e) of the Act?"

3. Both the Appellate Authorities, namely, Commissioner of Income Tax (Appeals) as well as the Tribunal held in favour of the assessee that as per the provisions of Section 2(22)(e) of the Act, the payments made by the company M/s.Ceebros Property Development Private Limited to M/s.Ceebros Hotels P. Ltd. could not be treated as deemed dividend in the hands of the respondent/assessee Mrs.C.Rajini, W/o Mr.C.Subba Reddy, who held substantial shareholding in both the companies.

4. The learned counsel for the assessee has submitted before us that as far as husband's assessment is concerned, the Co-ordinate Bench of this Court, in which one of us (Dr.Anita Sumanth,J) was a party, has upheld the order passed by the learned Tribunal, while dismissing the Revenue's appeal in T.C.(A)No.1465 of 2007 dated 19.12.2016 (Commissioner of Income Tax V. Mr.C.Subba Reddy), holding that payments made by M/s.Ceebros Property Development Private Limited could not be treated as deemed dividend in the hands of the respondent/assessee/husband. The relevant portion of the said judgment of the Co-ordinate Bench of this Court are quoted below for ready reference:

> '7. The provisions of Section 2(22)(e) impose a deeming fiction and the conditions imposed therein call for strict and concurrent satisfaction being # (i) payment by closely held company, (ii) of the nature of an advance or loan, (iii) to a share holder or beneficial owners of shares, (iv) with more than 10% voting power, (v) for his individual benefit.
>
> 8. In the present case, the credit arises by virtue of a contractual obligation and a business transaction and

has been settled the very next year. There is no individual benefit derived by the Assessee. Moreover, the credit does not satisfy the definition of #advance# or #loan#. The fiction thus fails on several counts. The Revenue relies upon the judgment of the Supreme Court in the case of Miss P.Sarada vs. Commissioner of Income Tax (229 ITR 444) and the decision of the Calcutta High Court in M.D.Jindal vs. Commissioner of Income Tax (164 ITR 28).

9. In the first case, the assessee had made withdrawals from out of accumulated profits that were deemed to be dividend u/s 2(22)(e) of the Act. The defence taken was that the withdrawals could be taken to have been paid from out of monies lying to the credit of another shareholder. This was negatived by the Supreme Court. In the present case, there are no withdrawals and as the findings of fact by the lower authorities reveal, the frequency of advances by the Assessee to the company was more than in the reverse. The Calcutta High Court, in the case of M.D.Jindal, dealt with a transaction that was found to be colourable. The concurrent finding of fact in that case was to the effect that the transaction was a device designed to circumvent the provisions of Section 2(22)(e) of the Act. The veil was thus lifted and the true facts brought to light. In the present case, there is no such allegation and on the contrary, the concurrent finding is to the effect that no benefit has accrued to the assessee, the credit is the result of a business transaction and is neither in the nature of a loan or a deposit. The decisions relied upon by the revenue do not advance its case, being distinguishable on facts.

10. Various case laws have been cited by the counsel appearing for the Assessee but we do not consider it necessary to advert to the same in view of our conclusion on the facts of the present case, that the provisions of Sections 2(22)(e) of the Act do not stand attracted.'

5. Learned counsel for the Revenue, however, cited a judgment of the Supreme Court in the case of Gopal and Sons (HUF) V. Commissioner of Income Tax ((2017) 145 DRT 289)(SC) wherein the Honourable Supreme Court in the facts obtaining before it held that the payments made to HUF defined as a 'concern' in Explanation to Section 3(a) of the Act were rightly treated as deemed dividend in the hands of the assessee invoking the provisions of Section 2(22)(e) of the Act.

6. We find the facts of the said case before the Honourable Supreme Court are distinguishable, as the present case before us

is that of a juristic person, namely, a Private Limited Company. Since the assessment of the husband, who is similarly situated as the respondent/assessee, wife in the present case before us, has already been decided in favour of the assessee by the Co-ordinate Bench of this Court dated 19.12.2016 (supra), we do not find any merit in the contention of the learned counsel for the Revenue before us. The appeal of the Revenue, therefore, deserves to be dismissed, following the aforesaid judgment of the Co-ordinate Bench.

7. Accordingly, the substantial questions of law are answered in favour of the assessee and against the Revenue. This Tax Case (Appeal) filed by the Revenue is dismissed. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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

2. The Commissioner of Income Tax(Appeals)-I,
   Chennai - 34.

3. The Commissioner of Income Tax
   Chennai.

4. The Assistant Commissioner of Income Tax,
   Central Circle IV(3), Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.7003

+1cc to Mr.S.Sridhar, Advocate, S.R.No.6889

T.C.No.1351 of 2007

Kak(06/03/2019)