IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.2012 of 2008

Smt. Chandra Ramesh,
2, Vijayaraghava Road,
T.Nagar Chennai-600 017. ..Appellant

-vs-

The Income-tax Officer,
Ward I(1), Chennai-600 034. ..Respondent

Tax Case Appeal filed under Section 260A of the Income-tax Act, 1961 against the order dated 07.05.2008 in I.T.A.No.708 (Mds)/2005 on the file of the Income Tax Appellate Chennai Tribunal "A" Bench, Chennai for the assessment year 2001-02.

against the Order of the Commissioner of Income Tax (Appeals-VI), Chennai -34, dated 13.12.2004 in ITA No.82/04-05, preferred against the Order of the Income Tax Officer, Ward I (1), Chennai dated 31.03.2004 in (PAN/GIR:AAAPR658L).

For Appellant :Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar,
Padmanabhan & Ramamani

For Respondent :Mr.T.Ravikumar,
Senior Standing Counsel

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JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/assessee filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income-tax Appellate Tribunal Chennai 'A' Bench (for brevity, "the Tribunal"), dated 07.05.2008, in I.T.A.No.708(Mds)/2005 for the assessment year 2001-02.

2.The above appeal has been admitted on 05.01.2009, on the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in rejecting the consistent method of valuation of shares at cost or market price whichever is less and disallowing the corresponding loss?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that it is the intention of the appellant and the manner in which the investment is held that determines the character as to whether it is a long term investment or stock in trade?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in ignoring the fact that profit on sale of shares have been assessed as business income and loss on value of share has been allowed as a deduction in the earlier year and has been accepted by the department?"

3.We have heard Mr.R.Venkatanarayanan, learned counsel for M/s.Subbaraya Aiyar, Padmanabhan & Ramamani, learned counsel for the appellant/assessee; and Mr.T.Ravi Kumar, learned Senior Standing Counsel for the respondent/Revenue.

4.The short issue which falls for consideration is whether, the stocks which were shown in the investment account as investment only could be taken into consideration for claiming a deduction. The Assessing Officer while completing the assessment, vide order dated 31.03.2004, for the assessment year under consideration, recorded the following fact:-

"Again the assessee has taken the market price of the above shares as on 31.03.2001 and created the above provision for diminution and further claimed it again as a loss. As per assessee's own submission the above transaction is shown as investment. The very fact that they are taking them into the investment account shows that they cannot be treated as closing stock. Further it is purely notional and contingent. Assessee has also admitted it to be a provision only. The assessee failed to furnish any further evidence or details in this regard. As the claim is contingent and only a provision, it cannot be an allowable deduction for the purpose of computing his profit."

5.From the above, it is seen that the assessee had shown the shares as investment in the books of account and there was no trading activities. Consequently, the Assessing Officer held that it cannot be allowed as deduction for the purpose of computing the profit of the assessee.

6.The assessee preferred appeal before the Commissioner of Income-tax (Appeals)-VI, Chennai (for brevity, "The CIT(A)"), in I.T.A.No.82/04-05. The said appeal was dismissed by order dated 13.12.2004. The following factual finding was recorded by the CIT(A) to dismiss the assessee's appeal.

> "4.2.3.............From the details filed by the appellant it is seen that the shares have been held by the appellant since as early as 1990. The appellant herself has admitted that there was no trading in the shares. Therefore, I agree with the Assessing Officer that the shares were held as investment and not as 'stock in trade'. Even in her accounts the appellant is showing these shares as investment.........."

7.The assessee filed appeal before the Tribunal challenging the order passed by the CIT(A), which was confirmed by the impugned order. The Tribunal, which is the last fact finding authority, went into the factual thicket and held that the reasons assigned by the CIT(A), affirming the reasons of the Assessing Officer are correct.

8.Mr.R.Venkatnarayanan, learned counsel submits that in respect of the assessment for the years 1998-99, 1999-2000, 2000-01 and 2003-04, the Tribunal had passed an order dated 05.02.2010 in the appeals filed by the Department and remanded the matter to the Assessing Officer for fresh consideration on the very same issue. Further, it is submitted that the Tribunal, in respect of the identical issue, for the assessment years 1998-99, 2000-01 and 2002-03 in the assessee's appeals, passed an order on 08.12.2017 remanding the matter to the Assessing Officer for fresh consideration. Therefore, it is submitted that an opportunity should be given to the assessee to establish that for the purposes of the Income-tax Act, 1961, the investment in share is a stock-in-trade. In support of his contention, the learned counsel placed reliance on the decision of the High Court of Karnataka in the case of Karnataka Bank Ltd., vs. Assistant Commissioner of Income Tax reported in (2013) 356 ITR 0549 (Karnataka).

9.Mr.T.Ravi Kumar, learned Senior Standing appearing for the Revenue submitted that the Assessing Officer and the CIT(A) have thoroughly examined the facts and have specifically recorded that no record was placed by the assessee to show that the shares are stock-in-trade. This factual finding was affirmed by the Tribunal. Further, it was pointed out that the orders passed by the Tribunal, dated 05.02.2010 and 08.12.2017, are factually distinguishable and has drawn the attention of this Court to the reasons assigned by the Tribunal therein. In support of his contention, the learned counsel placed reliance on the decision of the High Court of Karnataka in the case of Kerala Small Industries Development Corporation Ltd., vs. Commissioner of Income Tax reported in (2004) 270 ITR 0452.

10.The assessee seeks for a remand to the Assessing Officer to redo the exercise and this argument is based on the two orders passed by the Tribunal in the assessee's own case for the earlier years.

11.As rightly pointed out by Mr.T.Ravi Kumar, the Tribunal while passing an order of remand was conscious of the fact that for the year 2001-02, the Tribunal has dismissed the assessee's appeal on 07.05.2008 (impugned herein). However, the Tribunal noted that in the assessment year, which is under consideration in this appeal, the assessee did not produce any records whereas, before the Tribunal in those years which was concerned, the assessee had shown record that it was in trading activity. Therefore, the decisions of the Tribunal dated 05.02.2010 and 08.12.2017 can be of no assistance for the assessee for the present assessment year, viz., 2001-02. Apart from that, the entire issue is factual and the two authorities and the Tribunal have held that the assessee did not substantiate her plea by producing any documents. Therefore, we cannot be called upon to re-examine the factual issues in an appeal filed under Section 260A of the Act.

12.The decision in Karnataka Bank Ltd. (supra) can be of no assistance to the case of the assessee because, in the said case, it was found that the assessee maintained accounts in terms of the Reserve Bank of India Regulations and he has shown it as investment, consistently, for more than two decades, it has been shown as stock-in-trade and depreciation has been claimed and allowed. Therefore, the Court held that notwithstanding that in the balance sheet, it is shown as investment for the purpose of Income-tax Act, it is shown as stock-in-trade. On the facts and circumstances of the said case, the Court rendered such finding whereas, in the instant case, there is absolutely no record placed by the assessee either before the Assessing Officer or before the CIT(A) or before the Tribunal to substantiate her stand. Therefore, the decision in Karnataka Bank Ltd. (supra) cannot be applied to the facts of the present case.

13.In the case of Kerala Small Industries Development Corporation Ltd. (supra), the Court had elaborately considered more or less an identical issue. In the said case, the Kerala Small Industries Development Corporation Limited, the assessee, made investment in co-operative societies and the question was whether it can be treated as stock-in-trade or a trading asset. After examining the memorandum and articles of association of the assessee-company, the Court took into consideration as to what the word “business” connotes and held that it connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. It further held that a single and isolated transaction can be held to be conceivably capable of falling within the definition of “business” as being an adventure in the nature of trade provided the transaction bears clear indicia of trade. Considering the facts of the said case, it was pointed out that the investment of the assessee in the co-operative societies cannot be treated as a trading activity, there was no purchase or sale involved, no such transaction and that the transaction made by the assessee in the form of shares in co-operative societies are only in the nature of capital investments in furtherance of the objects of the company and not as trading capital or circulating capital of the assessee company. The decision in Kerala Small Industries Development Corporation Ltd. (supra) is a clear answer to the assessee's case to hold that the assessee has not made out any ground to interfere with the order passed by the Tribunal.

14.Thus, for the above reasons, the appeal filed by the assessee stands dismissed and the substantial questions of law are answered against the assessee. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Chennai Tribunal “A” Bench, Chennai.

2.The Income-tax Officer, Ward-I(1), Chennai-34.

3.The Commissioner of Income-tax (Appeals)-VI,
121, Mahathma Gandhi Road, Chennai-600 034.

+1cc to M/s.T.Ravi Kumar, Advocate, S.R.No.50698

T.C. (A) No.2012 of 2008

BP(CO)
RV(30/11/2020)