

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.8.2019

CORAM :

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

Tax Case Appeal No.1179 of 2010

The Director of Income Tax,  
Chennai.

...Appellant

-vs-

M/s.Kshetropasana

...Respondent

APPEAL under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, Chennai dated 15.6.2010 in I.T.A.No.429/Mds/2010 for the assessment year 2004-05 as against the order of the Commissioner of Income Tax, Appeals-XII, Chennai, made in ITA No.68/08-09, dated 12.01.2010 as against the order of the Deputy Director of Income Tax, Exemptions-I, Chennai for the Assessment Year 2004-05 dated 14.11.2008

For Appellant : Mr. J.Narayanaswamy, SSC

For Respondent: No appearance

Judgment was delivered by T.S.Sivagnanam,J

This appeal, filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 15.6.2010 in I.T.A.No.429/Mds/2010 for the assessment year 2004-05

2. This appeal was admitted on 11.1.2011 on the following substantial question of law:

"Whether, on the facts and circumstances of the case, the Tribunal was right in not considering that the investment in shares is in violation of the provisions contemplated under Section 13(1)(d) or not ?"

3. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Revenue. Though the respondent has been served, none appears for the respondent.

4. On a careful perusal of the entire material papers and reading of the order passed by the Tribunal, we find that the entire matter is wholly factual. The Assessing Officer, vide order dated 14.11.2008, by referring to Section 11(5) of the Act, held that the assessee trust was required to dispose or convert the assets not conforming to the requirement of Section 11(5) of the Act into permissible investment within one year from the end of the financial year, in which, such bonus shares or other assets are received or 31.3.1992, whichever is later and that the income over expenditure derived by the assessee during the previous year relevant to the assessment year 2004-05 is assessable at the maximum marginal rate. This issue arose for the earlier assessment years also namely 2000-01 and 2001-02.

5. In the assessee's own case, the Tribunal in ITA.No.849/Mds/2006 dated 12.10.2007 for the assessment year 2002-03 held in favour of the assessee. The CIT(A) for the assessment year under consideration followed the said decision and allowed the assessee's appeal. The Revenue preferred an appeal before the Tribunal, which, by the impugned order, dismissed the appeal vide order dated 15.6.2010. Hence, the Revenue is before us.

6. So far as the order passed by the Tribunal for the assessment year 2002-03 is concerned, admittedly, the Revenue did not prefer any appeal.

7. The learned Senior Standing Counsel for the appellant/Revenue, on instructions, submits that the appeal was not preferred on account of low tax effect.

8. It is not known as to how the appeal could not have been filed for two reasons namely the issue is a recurring issue and apart from that, the Tribunal followed the decision of this Court in the case of CIT Vs. Nagi Reddy Charities [reported in 241 ITR 431], which, according to the Revenue was distinguishable. In any event, the order passed in the assessee's own case, which was affirmed by the Tribunal, has become final.

9. So far as the present appeal is concerned, the Tribunal took note of the factual position and held that it is not for the assessee to sell the shares and law cannot compel one to do the impossible.

10. We are of the considered view that decision arrived at by the Tribunal is upon appreciation of the factual position and we find that there is no substantial question of law arising for consideration in this appeal.

11. Accordingly, the above tax case appeal is dismissed on the ground that no substantial question of law arises for consideration.

Rs

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,  
Chennai 'C' Bench, Chennai.

2. The Commissioner of Income Tax, (Appeals-XII,  
Chennai.

3. The Deputy Director of Income Tax,  
Exemptions- II, Chennai.

+1cc to Mr.J. Narayanaswamy, Advocate, SR.No.71423

TCA.No.1179 of 2010

Kak (20/09/2019)

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