IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.14126 & 14127 of 2010
and M.P.Nos.1 & 1 of 2010

Smt. P. Hema .... Petitioner in both WPs.

Vs.

1.The Commissioner of Income Tax,
Chennai X, 121, Nungambakkam
High Road, Chennai 600 034.

2.The Tax Recovery Officer XXVI,
Range XIII, 121, Nungambakkam
High Road, Chennai 600 034.

3.The Official Liquidator,
Rajaji Salai, Chennai - 600 001.
(R3 impleaded vide order dated 16.10.2019)

.... Respondents in both WPs.

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent Commissioner of Income tax, Chennai X, Chennai in his file C.No.10144/17/CIT-X/2004-05, for assessment year 2001-02, dated 31.03.2010 quash the same and direct the first respondent to entertain and consider the Revision Petition on merits and thereby delete the capital gains on sale of shares of Ajith Dairy Industries Limited wrongly brought to tax.

For Petitioner in both W.Ps: Mr.T.N.Seetharaman

For Respondents in both W.Ps: Mrs.Hema Muralikrishnan,
Senior Standing Counsel
for R1 & R2
Mr.Bavisetty Sridhar,
Deputy Official Liquidator -R3

C O M M O N   O R D E R

These two Writ Petitions have been filed by an individual challenging orders of the Commissioner of Income Tax, R1 dismissing petitions for Revision under Section 264 of the Income Tax Act, 1961 (in short 'Act').

2. The petitioner had filed returns of income for the assessment year 2001-02 offering to tax capital gains on sale of shares of an entity under the name and style of Ajith Dairy Industries Limited (in short 'Company'). What transpired in the meantime was that a company by the name and style of RPS Benefit Fund Limited (in short 'RPS') had gone into liquidation and this Court, in Company Application No.162 of 2009 in Company Petition Nos.233 to 238 of 1999, had appointed an Official Liquidator directing him to remit the capital gains on the sale of shares of the Company including the shareholdings of the petitioner in these Writ Petitions as well as four other family members and appropriate the consideration received towards meeting the claims of depositors of RPS. The Official Liquidator was thus directed to pay the entire capital gains of a sum of Rs. 1,47,78,955/- in respect of assessment year 2001-02. At Paragraph No.4, the learned Company Judge states as follows:

> '4. Considering the facts and circumstances of the case and taking note of the report of the Official Liquidator, this Company application is ordered permitting the Official Liquidator to pay the capital gains tax of Rs.1,47,78,955/- for the assessment year 2001-2002; to make an appeal before the Income Tax Department to waive the penalties imposed by them and to engage the services of M/s.Sarathy & Vasu, Chartered Accountants for moving the above mentioned appeal by paying professional fees of Rs.15,000/- to them from and out of the funds to the credit of the Company in liquidation.'

3. The order of assessment passed in the hands of RPS Benefit Fund Ltd. represented by the Official Liquidator, is dated 12.11.2008. After recording the detailed discussions had with the authorized representatives appointed by the Official Liquidator pursuant to orders of this Court, the Assessing Authority brought to tax the capital gains from the sale of shares of the Company as well as sale of vehicles. The total capital gains from sale of shares was computed at a figure of Rs.6,50,73,151/- and the tax thereupon at a figure of Rs.1,42,45,449/- which, along with surcharge at 13% of a sum of Rs.20,12,316/-, amounted to Rs.1,47,78,955/- This amount

represents the capital gains tax payable by five entities, i.e., P.G.Saranyan, S.Premchand, K.Sudarsanan, S.Rajalakshmi and P.Hema, the last being the petitioner in the Writ Petitions before me. This Court had also impleaded the Official Liquidator, who appears today and confirms the position that the aforesaid amount has been remitted pursuant to the orders of this Court. Challan dated 02.03.2009 to this effect is placed on record.

4. In the light of the fact that the amount of capital gains has been remitted in full by the company, there can be no double demand made of the same amount, in the hands of the petitioner.

5. In W.P.No.14126 of 2010, by proceedings under Section 264 dated 31.03.2010, R1 rejects the petition for revision as not maintainable. He notes the position that the petitioner had originally filed an appeal before the Commissioner of Income Tax (Appeals). This premise is in itself incorrect, for the reason that the petitioner, had not remitted the admitted tax prior to filing of appeal leading to the dismissal of the same in limine as not maintainable. Thus the filing of the revision application before the Commissioner is proper and there is no flaw in that regard. The second question raised is whether, having filed a return admitting certain income, the petitioner can go back on her return.

6. I am of the view that in the facts and circumstances of the case, where subsequent events have ensured that the entire tax demand including the amount offered to tax by the petitioner and the demand of tax payable thereon has been satisfied by the company pursuant to an order of this Court passed in Company Application No.162 of 2009, there can be no further demand on the petitioner. R1, as revisional authority, is certainly empowered, under the provisions of the Act, to consider such requests balancing the interests of the assessee as well as the Income Tax Department to ensure that the proper and appropriate of demand is satisfied and no more.

7. These Writ Petitions are allowed and the impugned orders are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

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3.The Official Liquidator,
Rajaji Salai, Chennai - 600 001.

+1cc to Mr.T.N.Seetharaman, Advocate SR.92361

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.91856

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AD(CO)
CB(13/01/2020)