IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos.21 to 23 of 2011

The Commissioner of Income Tax-III,
Coimbatore ... Appellant in all the Appeals

-vs-

Shri K.P.D.Sigamani
PAN: ACWPD4021E ... Respondent in TCA.No.21 of 2011

Shri K.P.Ramasamy
PAN: AARPR1787J ... Respondent in TCA.No.22 of 2011

Shri P.Nataraj
PAN: ABOPN9966D ... Respondent in TCA.No.22 of 2011

COMMON PRAYER: Tax Case (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "B" Bench, Chennai, dated 30.07.2010, passed in I.T.A.No.412/2010, I.T.A.No.413/2010 and I.T.A.No.414/2010 for the assessment year 2007-2008 against the Appellate order passed by the commisioer of Income Tax(A)-I,Coimbatore, dated 05.03.2010 Appeal Nos.145/09-10 (in TC(A) 21/2011),146/09-10(in TC(A) 22/2011), 144/09-10 (in TC(A) 23/2011) Respectively,

against the Assessment Order Passed by the Assistant Commisoner Of Income Tax Company Circle I(3) Coimbatore,Dated 20.12.2009 made in PAN/GIR Nos ACNPD 4021E (in TC(A) 21/2011), AARPR 1787 J (in TC(A) NO.22/2011 and ABOPN 9966D Respectively.

For Appellant in all the appeals :Mr.T.R.Senthilkumar
Senior Standing Counsel
Ms.K.G.Usharani

For Respondent
in all the appeals :Mr.A.S.Sriraman
Mr.S.Sridhar

COMMON JUDGMENT

(Common Judgment was delivered by T.S.Sivagnanam, J.)

These tax case appeals filed by the revenue under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") are directed against the order passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, dated 30.07.2010, passed in I.T.A.No.412/2010, I.T.A.No.413/2010 and I.T.A.No.414/2010 for the assessment year 2007-2008.

2.These tax case appeals have been admitted on 08.03.2011 on the following substantial questions of law:

> "(i) Whether on the facts and circumstances of the case, the Income-Tax Appellate Tribunal was is right in law in directing the assessing officer to accept the claim of the assessee in respect of the forfeiture of the partly paid up the shares of M/s.KPR Sugar Mills P.Limited as Short Term Capital Loss is valid?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was is right in law in directing the assessing officer to accept the claim of the assessee in respect of the forfeiture of the partly paid up the shares of M/s.KPR Sugar Mills P.Limited as Short Term Capital Loss, even though the assessment was completed under Section 143(3) disallowing of Short Term Capital Loss on account of call monies paid to KPR Sugar Mills Ltd since it was treated as a sham transaction as the facts of the case fell within the ambit of decision of Hon'ble Supreme Court in the case of MCDOWELLS LIMITED reported in 154 ITR 148?"

3.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned counsel for the appellant/revenue and Mr.A.S.Sriraman, learned counsel for the respondent/assessee.

4.The assessees are brothers and founder shareholders of various Companies commonly known as M/s.KPR Group. During the year 2005-06, two of the Companies got amalgamated and the name was changed to M/s.KPR Limited. The third Company was converted into Public Limited Company and shares were also listed in the Stock Exchange. The assessee being the major shareholders in M/s.KPR Mills Limited filed their return of income for the assessment year 2007-08 admitting long term capital gain and sale of shares of M/s.KPR Mills Limited. Against these long term capital gains, the assessees had claimed set off of short term capital loss of Rs.10.90 Crores which arose on account of forfeiture of call monies paid to M/s.KPR Sugar Mills which was promoted by the assessees and other family members. The claim was made relying upon the decision of the High Court of Karnataka in the case of DCIT vs. BPL Sanyo Finance Ltd. [312 ITR 63]. The Assessing Officer disallowed the claim of short term capital gains on the ground that the transaction was sham as it was structured only to evade tax arising on sale of shares. Against the said order, the assessees preferred an appeal before the Commissioner of Income Tax (Appeals)-I (CIT(A)) to confirm the findings of the Assessing Officer. Against which the assessees preferred an appeal before the Tribunal which was allowed by the impugned order. Challenging the same, the revenue is before us by way of these appeals raising the above substantial questions of law.

5.The Tribunal threadbare analysed the nature of transaction done by the assessees in the process of establishing M/s.KPR Sugar Mills. The Tribunal noted that no prudent businessmen would permit loss of capital under normal circumstances and it is only under unavoidable circumstances that a person lets go or permits forfeiture of his capital. Further, the Tribunal pointed that the forfeiture of capital is not the claim of the revenue that the money is re-routed and has come back into the coffers of the assessees. The money which was invested in M/s.KPR Sugar Mills P. Ltd which was unable to even set up on account of the litigation commenced by the competitor M/s.Renuka Sugars Ltd. who had challenged the license granted to M/s.KPR Sugar Mills P. Ltd. and the Ho'ble Supreme Court had also granted stay. Thus, taking note of the factual situation into consideration, the Tribunal held that the decision taken by the assessees cannot obviously be treated as a sham or colourable devise. We are in agreement with the finding recorded by the Tribunal which was rendered on re-appreciation of the factual details. Furthermore, the Tribunal had noted that there is no whisper or any allegation that the amount invested in the forfeited shares has come back to the assessees in any form whatsoever. Further, the Tribunal noted that the forfeiture are not claimed to be bogus nor it has been shown to be a fraud or colourable devise. Thus, on facts the Tribunal convinced that the forfeited shares cannot be treated to be a fraudulent transaction or colourable device.

6.We have perused the order passed by the CIT(A) and we find that the CIT(A) has not given any positive finding as to how the transaction to be termed as a colourable device or fraudulent transaction. In fact the order proceeds on surmises and conjunctures and there is no finding to the effect that a colourable device was conceived by the assessee to defraud the revenue. Thus, for the above reasons, there is no ground made out to interfere with the factual finding rendered by the Tribunal. Accordingly, these tax case appeals are dismissed and consequently, the substantial questions of law arising for consideration are answered against the revenue. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse
To

The Income-tax Appellate Tribunal,
"B" Bench, Chennai.
2.The Commisioner of Income tax(A)-I,Coimbatore

3.The Assistant Commionser of Inceme Tax
Company Circle I(3),Coimbatore.

4.The commisioner of Income tax III,Coimbatore

+1cc to Mr.T.R.Senthilkumar , Advocate SR.No. 8538
+1cc to Mr.S.Sridhar , Advocate SR.No. 7821

Tax Case (Appeal) Nos.21 to 23 of 2011
A.SK(11/03/2019)