IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-03-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.Nos.519 TO 524 OF 2011

Commissioner of Income Tax,
No.3, Gandhi Road,
Salem - 636 007. ... Appellant in all Appeals

-vs-

M.Pranuthi ... Respondent in all Appeals

T.C.A.No.519 of 2011 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 25.03.2011, passed in ITA Nos.1120, 1121, 1122, 1123, 1124 & 1125/mds/2010 respectively.

against the order of the Commissioner of Income Tax (appeals) Salem dated 30.04.2010 and made in I.T.A.Nos.230/09-2010(Old I.T.A.Nos.08,09 & 10/06-07 for the assessment year 2003-2004, 2004-2005 & 2005-2006.

against the order of the Assistant Commissioner of Income Tax, Circle I, Salem 7 dated 30.12.2005, 22.02.2006 & 22.02.2006 respectively, Deputy Commissioner of Income Tax Circle I, Salem 7 dated 30.04.2008, 10.11.2008 & 10.11.2008 respectively and made in PAN/GIR No. AGMPP91698/1EPP0004 for the assessment year 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008 and 2008-2009 respectively.

For Appellant in all Appeals : Mrs.K.G.Usha Rani,
Junior Standing Counsel,
for Mr.T.R.Senthil Kumar,
Senior Standing Counsel.

For Respondent in all Appeals :Mr.A.S.Sriraman,
for Mr.S.Sridhar.

JUDGMENT
(Delivered by Dr.Vineet Kothari,J.)

Revenue has filed these Appeals aggrieved by the order passed by the learned Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 25.03.2011, in I.T.A.Nos.1120 to 1125/Mds/2010, dismissing the Appeals filed by the Revenue for Assessment Years 2003-2004 to 2008-2009.

2. The Substantial Questions of Law, on which these Appeals were admitted by a Co-ordinate Bench of this Court on 06.02.2012, are quoted below for ready reference :

> ''(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the minor's income cannot be taxed at all if both the parents are not alive ?
>
> (2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income of the minor will be completely exempt from tax if both the parents are not alive ?
>
> (3) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the absence of a specific provision in Section 64 to tax the income of the minor whose parents are not alive would render the charging Section 64(1A) (sic) a redundant provision ?
>
> (4) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the parental grandfather, who filed the Return of Income, could not be treated as a representative assessee as per the provisions of Section 160 (1) (iii) of the Income Tax Act ?''

3. When these Appeals are taken up for hearing, learned counsel at Bar submitted that the issues involved in these Appeals are covered by a recent decision of this Court in the case of Assessee itself in R.P.Sarathy for Minor M.Pranuthi v. JCIT in T.C.A.Nos.886 to 892 of 2007 and 1282 to 1288 of 2008 decided on 20.03.2019. The operative portion of the said order reads as under :

> '' 31. The answer is obvious, simple and clear. It is to be found in Section 160 (1) (ii) of the Act and it is the 'Guardian', namely, grandfather-Mr.R.P.Sarathy, in the present case, who not only filed Returns of Income and even paid tax in the

first instance, but thereafter claimed exemption and also the refund of tax, as noted by the Assessing Authority. Unfortunately, these relevant provisions in Chapter XV do not appear to have been considered by any of the authorities below, namely, Assessing Authority, First Appellate Authority and even the Tribunal, which dealt with this case.

32. The clubbing provisions in Section 64(1A) of the Act cannot be said to be charging provisions and they were enacted as an anti-evasive measure to plug the loopholes in the taxation of the income of Minors, which was found to be used by parents, but not taxed and also to avoid diversion of parents' income to the Minor by way of gifts or otherwise and then out of that corpus of funds, income of interest etc., arising out of the hands of the Minors, not being brought to tax and, therefore, the clubbing provisions were introduced in Sub-section (1A) to Section 64 to add the income of Minor in the hands of parent, having higher taxable income. The only exception was, where the Minor, by his or her own skills, earns some income, which was to be taxed in the hands of minor child itself, without attracting the clubbing provisions. The clubbing provisions are, therefore, nothing but machinery provisions to obligate the parent of the child to discharge the tax obligations in respect of income arising or accrued to the minor child. If parents viz., father and mother are not available, as in the present case, Section 160 (1) (ii) of the Act will stand attracted and the Guardian like the grandfather in the present case will become the Legal Representative, liable to discharge all the tax obligations under the Act on behalf of the minor. The later amendment by insertion of Sub-section (1A) to Section 64 of the Act, therefore, cannot be said to mean that the income taxable in the hands of the Minor was brought to tax for the first time by the Finance Act,1992, with effect from 01.04.1993.

33. As already stated, the above provision in Chapter V dealing with 'Income of other persons to be included in Assessee's total income', popularly known as 'Clubbing Provisions', are not the charging provisions, but are Machinery Provisions to plug the loopholes in tax evasion and to bring to tax the income of spouse, minor child etc., in the hands of the spouse or parent, as the case may be.

34. Thus, we are of the clear opinion that the Tribunal has wholly erred in holding that since there is no provision to assess the minor's income in the hands of the minor and, if the parents do not

survive, the income cannot be clubbed in the hands of any of his grandparents or anybody, who maintains minor child, and, therefore, the orders of two authorities bringing the income of minor to tax in the hands of the Minor deserve to be quashed.

35. While the foundational error in the order of the Tribunal is leaving the income of the Minor untaxed altogether, the error committed by the two authorities below, namely, Assessing Authority and First Appellate Authority, was that they held the income to be taxable in the hands of the minor girl herself, altogether forgetting the provisions of Sections 159 and 160 (1) (ii) in Chapter XV of the Act. They also possibly did not fully comprehend the entire Scheme of the Act in a composite and harmonious manner and instead of considering the question as to who should be assessed and held liable to pay the tax, they fell in error of taxability or non-taxability entirely in respect of the income of the Minor, which was apparently taxable under the provisions of the Act. The income from share of partnership firms and income of interest from money lending business do not have any exemption from tax in the exemption provisions contained in Chapter III, comprising Sections 10 to 13B and, therefore, what was apparently taxable has been let off by the learned Tribunal to be altogether non-taxable and that too ignoring the important provisions of the Act, as aforesaid.

36. Once we come to the conclusion that Income in the present case was taxable in the hands of representative-assessee-Guardian and grandfather Mr.R.P.Sarathy for the period for which the said minor girl Ms.M.Pranuthi remained a Minor, we do not find any justification for holding otherwise, by pronouncing upon the question of validity of Re-assessment proceedings under Section 147/148 of the Act. The said proceedings were also apparently rightly invoked on the basis of Return of Income filed by grandfather Mr.R.P.Sarathy himself on behalf of Minor only as NIL Return and only an Intimation of Assessment under Section 143 (1) (a) of the Act was issued by the Assessing Authority. In order to bring to tax such escaped income, the Assessing Authority rightly invoked Section 147/148 of the Act.

37. Therefore, all the Substantial Questions of Law in the aforesaid present Appeals are answered against the Assessee and in favour of the Revenue.

38. It is brought to the notice of this Court that the Guardian of the Minor, namely, Mr.R.P.Sarathy has expired recently on 04.01.2019 and that the Minor Ms.M.Pranuthi has become major. Therefore, it is made clear that our answers have been given for the period in which Ms.Pranuthi was only Minor in the years from 1995 to 1999 and the assessment/reassessment made against her grandfather as Legal Representative was valid and the consequential recovery action can now proceed against her and her assets or business, as the case may be.

39. We, accordingly, dismiss the Appeals viz., T.C.A.Nos.886 to 892 of 2007 filed by the Assessee and allow the Appeals viz., T.C.A.Nos.1282 to 1288 of 2008, filed by the Revenue. No costs.''

4. In view of the above settled position, these Appeals filed by Revenue stand allowed on similar terms. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.Income Tax Appellate Tribunal,
Chennai 'A' Bench,
Chennai.

2. The Commissioner of Income Tax (appeals)
Salem.

3. The Assistant Commissioner of Income Tax
Circle I, Salem 7.

4. The Deputy Commissioner of Income Tax Circle I
Salem 7.

+1 CC to Mr.S.Sridhar, Advocate sr 26540.
+1 CC to Mr.T.R.Senthil Kumar, Advocate sr 27622

T.C.A.Nos.519-524 OF 2011

SV(CO)
SP(30/04/2019)