In the High Court of Judicature at Madras

Dated : 27.08.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.844 of 2015

Commissioner of Income Tax II,
121, Nungambakkam High Road,
Chennai - 600 034. ...Appellant/Respondent

Vs

M/s.Fairmacs Shipping & Transport
Services Pvt. Ltd.,
New No.31, Moore Street, Chennai - 600 001.
PAN: AAACF0474A ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.03.2015 made in ITA.No.3049/MDS/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2010-11.

Preferred against the order dated 16.9.2014 made in Appeal No.669/2013-14 on the file of the Commissioner of Income Tax (Appeals)-II, Chennai for the Assessment year 2010-11, and against the Assessment order of the Assistant Commissioner of Income Tax, Company Circle II(1) Chennai dated 20.3.13 for the Assessment year 2010-2011.

For Appellant : Mr.Karthik Ranganathan, SSC assisted by Mr.S.Rajesh, SC

For Respondent: Mr.R.Sandeep Bagmar

JUDGMENT

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

We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel, assisted by Mr.S.Rajesh, learned Standing Counsel appearing for the appellant/revenue and Mr.R.Sandeep Bagmar, learned counsel appearing for the respondent/assessee.

2.This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 20.03.2015 made in ITA.No.3049/MDS/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2010-11.

3.The appeal was admitted on 14.10.2015 on the following substantial questions of law :

> "1.On the facts and in the circumstances of the case, whether the ITAT is justified in holding that the loans and advances taken by a Concern cannot be subjected to addition as deemed dividend under Section 2(22)(e) of the Act?
>
> 2.Whether, on the facts and in the circumstances of the case, the ITAT was right in holding that the assessee Company was not the beneficial owner of shareholding in its Sister Concern when both the shareholders are one and the same in both the Companies?
>
> 3.On the facts and in the circumstances of the case, whether the restrictive interpretation of section 2(22)(e) by the ITAT does not amount to ignoring the second limb of provisions to Section 2 (22)(e) wherein the word "Concern" is also included for the purpose of taxation of deemed dividend in its hands?
>
> 4.Whether, on the facts and in the circumstances of the case, the Honourable ITAT was right in granting liberty to the Revenue for roping in the shareholders concerned when the law does not provide to do so?"

4.The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5.In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

cse
To

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

2.The Commissioner of Income Tax(Appeal)-II,
Chennai.

3.The Assistant Commissioner of Income Tax,
Company CircleII(1), Chennai.

TCA.No.844 of 2015

RSI(CO)
CB(19/11/2019)