In the High Court of Judicature at Madras

Dated : 30.8.2019

Coram :

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

Tax Case Appeal No.576 of 2016

Commissioner of Income Tax-II,
Chennai-34. ...Appellant

Vs

M/s.Fairmacs Shipstores P. Ltd.
Chennai-1. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.2.2015 made in ITA.No.761/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2007-08.

against the order of the Commissioner of Income Tax (Appeals) II, Chennai-34, dated 17.12.2013 made in ITA.No. 407/2013-14 against the Deputy Commissioner of Income Tax Company Circle - II (1), Chennai dated 31.12.2009 made in PAN/GIR No. AAACF 1406C for the Assessment Year 2007-08.

For Appellant:Mr.Karthik Ranganathan, SSC
for Mrs.K.G.Usharani
assisted by
Mr.S.Rajesh, SC

For Respondent:Mr.R.Sandeep Bagmar

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 11.2.2015 made in ITA.No. 761/Mds/2014 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2007-08.

3. The Revenue has filed this appeal by raising the following substantial questions of law :

> "i. In the facts and and circumstances of the case, whether the Tribunal 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 Income Tax Act ?
>
> ii. Whether, on the facts and circumstances of the case, the Tribunal 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? And
>
> iii. In the facts and circumstances of the case, whether the restrictive interpretation of Section 2(22)(e) by the Tribunal does not amount to ignoring the Second Limb of the 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. 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 raised 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 (CO)

//True Copy//

Sub Assistant Registrar

Rs

To

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

2.The Commissioner of Income Tax,
  (Appeals) II, Chennai-34.

3.The Deputy Commissioner of Income Tax,
  Company Circle - II (I), Chennai.

+1cc to Mr.Sandeep Bagmar, Advocate, S.R.No. 75989

TCA.No.576 of 2016

NMI(CO)
GN(12/11/2019)