IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.682 of 2018

Sarvodaya Mutual Benefit Trust, Thellar,
No.1-. Reddiyar Street,
Thellar Village Post,
Thiruvannamalai-604 406.
.. Appellant/Appellant

-vs-

Principal Commissioner of Income Tax, 8,
121, Mahatma Gandhi Road,
Chennai. .. Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income-tax Act, 1961 against the order dated 02.11.2017 on the file of the Income-tax Appellate Tribunal Bench 'A', Chennai, in I.T.A.No.1437/Mds/2016 for the assessment year 2009-10, against the order of the Commissioner of Income Tax(Appeals)-13, 121, Mahatma Gandhi Road, Chennai-34 made in ITA.NO.125/CIT(A) 13/2009-10 dated 23.02.16 in GIR.NO/PAN AAE7S2748F against the procedings of the Income Tax Office Ward I(5), Vellore ITMS-65 for Assessment year 2009-10.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.J.Narayanaswamy,
Senior Standing Counsel

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the appellant/assessee under Section 260A of the Income-tax Act, 1961, challenging the order dated 02.11.2017, passed by the Income-tax Appellate Tribunal Bench 'A', Chennai (for brevity, “the Tribunal”), in

I.T.A.No.1437/Mds/2016 for the assessment year 2009-10.

2.The following substantial questions of law have been raised for our consideration:-

> "i. Whether under the facts and circumstances of the case the Tribunal was right in upholding the order of the lower authorities that the share of the beneficiaries is indeterminate and therefore the appellant is liable for tax at maximum marginal rate?
>
> ii. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the appellant is liable to deduct tax at source in respect of interest on borrowings, disregarding the fact the individual beneficiaries for whose benefit the funds have been borrowed do not have taxable income and are not liable to deduct tax at source?
>
> iii. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the principle of mutuality does not apply to the appellant and that its income is liable to be taxed?"

3.Heard Mr.N.V.Balaji, learned counsel for the appellant/assessee; and Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondent/Revenue.

4.Before we go into the substantial questions of law, we are first required to decide as to whether the Tribunal could have rejected the assessee's appeal without following the decision in the case of Income-tax Officer, Ward I(1), Vellore vs. Sarvodaya Mutual Benefit Trust reported in [2013] 22 ITR(T) 277 (Chennai - Trib.) arising out of an assessment in the case of the assessee's apex body Survodaya Mutual Benefit Trust.

5.In the said decision, two issues were considered and held in favour of the assessee viz., surplus disputed not taxable in the assessee trust's hands; and the second being, the assessee-trusts, being representative assessees of Self Helf Groups (SHGs), were not liable to deduct Tax Deducted at Source (TDS).

6.We find from the impugned order that the Tribunal was aware of the order passed in Sarvodaya Mutual Benefit Trust (supra) in which decision, the Tribunal has captured the object for forming those self help groups. We find that the Tribunal though took note of the decision in the case of Sarvodaya Mutual Benefit Trust (supra), assigned certain reasons for not following the same. In our considered view, there are only two methods of dealing such a situation. Firstly, if the decision is per incurium, a finding to the said effect has to be given. Secondly, the Court or the Tribunal can refuse to follow the decision by distinguishing it on the factual matrix. If for other than these two reasons, the Court or the Tribunal is of the view that the decision rendered earlier is not acceptable to it, then the option is to refer it to a Larger Bench of the Court or the Tribunal. In this regard, it is worthwhile to refer to the decision of the Supreme Court in Union of India and Ors. vs. Kamlakshi Finance Corporation reported in (1992) 1 SCC 648 (SC), wherein the Court held as follows:-

> "6. ....The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."

7.Mr.J.Narayanaswamy, learned Senior Standing Counsel for the Revenue strenuously sought to sustain the order passed by the Tribunal. Much of his submissions revolve on the merits of the case, which we do not propose to go into, as we are on the very threshold of the matter, which requires to be considered.

8.In this regard, it is relevant to take note of the decision of this Court in the case of CIT vs. L.G.Ramamurthi And Ors. reported in 1977 110 ITR 453 Mad. Paragraph 25 of the judgment reads as follows:-

> "25. The above observation of this court in the Full Bench decision referred to above was dissented from by the decision of the Bombay High Court relied on by the learned counsel for the assessees referred to already on the ground that far from there being uniformity, different High Courts have taken different views and they have

> put a gloss on the observations of the Full Bench decision of this court referred to already. So long as the Full Bench decision of this court stands and has not been reversed or dissented from by the Supreme Court or reversed by a Fuller Bench of this court, the same is binding on us and, therefore, we cannot rely on the observation of the Bombay High Court which had dissented from the Full Bench decision of this court. Secondly, even assuming that the observations of the Bombay High Court referred to above can be relied on, still the position is that the succeeding Tribunal must refer to the facts which were before the former Tribunal, but which were not taken into account by that Tribunal and must observe that if those facts had been taken into account by the former Tribunal the former Tribunal itself would have come to a different conclusion. Such a statement in the order of the succeeding Tribunal is required in the interest of comity of judicial precedents as well as in the maintenance of judicial decorum and decency. Otherwise, it will lead to an assumed superiority on the part of the succeeding Tribunal as if it had discovered something which had escaped the attention of the former Tribunal and it alone was able to find out the truth, while the former Tribunal was not able to do so."

9.The aforementioned decisions will clearly indicate that the methodology adopted by the Tribunal, while passing the impugned order, is incorrect. Therefore, we are inclined to remand the matter to the Tribunal for fresh consideration. We left it open to the Tribunal to take note of the decision in Sarvodaya Mutual Benefit Trust (supra) and if for reasons acceptable to it, the decision can be applied to the facts of the case which is well open to do so, or for if any other reasons, the decision is found to be not acceptable to the Tribunal, then the matter may be referred to the Larger Bench of the Tribunal for consideration in an appropriate manner.

10.For the above reasons, we have not ventured into the merits of the matter, nor we have made an attempt to answer the substantial questions of law. It is made clear that when the matter is taken up for consideration, we are confident that the Tribunal will not be carried away or in any manner influenced by the observations made in the impugned order which we have set aside.

11.In the result, the appeal filed by the assessee is allowed the impugned order is set aside and the matter is remanded to the Tribunal for fresh consideration. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

(abr)

To

1.The Income-tax Officer, Ward I (5), Vellore.

2.The Commissioner of Income-tax (Appeals)-13,
121, Mahatma Gandhi Road, Chennai-600 034.

3.The Income-tax Appellate Tribunal Bench 'A', Chennai.

4.The Principal Commissioner of Income Tax 8
121, Mahatma Gandhi Road, Chennai-600 034.

+1cc to Mr.N.V.Balaji, Advocate sr.55700
+1cc to Mr.J.Narayanaswamy, Advocate sr.55698

T.C.A.No.682 of 2018

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