

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.319 OF 2018

M/s.TVS Investments I Fund,
No.29 (Old No.8), Haddows Road,
Nungambakkam, Chennai-600 006. .. Appellant/Appellant

-vs-

The Income Tax Officer,
Non Corporate Ward 3(5),
Wanaparthi Block, Aayakar Bhavan,
Chennai-600 034. .. Respondent/Respondent

Prayer:-

Appeal under Section 260A of the Income-tax Act, 1961,
against the order dated 19.04.2017 made in I.T.A.No.3339/
Mds/2016 on the file of the Income Tax Appellate Tribunal 'D'
Bench, Chennai for the assessment year 2009-10.

against the order of the Commissioner of Income Tax
(Appeals)4, Chennai, dated 30.09.2016 in I.T.A.No.142/2015-
16/A.Y.2009-10/ CIT (A)-4.

Against the order of the Income Tax Officer, Non-Corporate
Ward 3(5), Chennai-34, dated 29.12.2015 in AABTT5286A/2009-10.

Against the order of the Income Tax Officer, BW XV(2),
Chennai-34, dated 30.12.2011 in AABTT5286A.

For Appellant : Mr.Mr.Percy Pardiwala,
Senior Counsel
for M/s.Subbaraya Aiyar,
Padmanabhan & Ramamani

For Respondent : Mr.T.Ravi Kumar,
Senior Standing Counsel

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

This appeal by the appellant/assessee under Section 260A of the Income Tax Act, 1961 is directed against the order dated 19.04.2017 made in I.T.A.No.3339/Mds/2016 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2009-10.

2.The appeal has been filed raising the following substantial questions of law:-

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the assessee as a discretionary trust ignoring the fact that the beneficiaries and their share of interest in the trust are determinable at all points of time?

2.Whether on the facts and circumstances of the case and law the Tribunal was right in law in holding that the provisions of Section 160 is not applicable and the assessee is liable to be taxed on the entire income?

3.Whether on the facts and circumstances of the case and law the Tribunal was right in law in holding that the entire receipt is taxable in the hands of assessee even though the income and expenditure have been distributed and intimated to the beneficiaries?

4.Whether on the facts and circumstances of the case and law the Tribunal was right in law in holding that entire income is taxable in the hands of the assessee even though ignoring the evidence that some of the beneficiaries have offered the income in their return of income?

5.Whether on the facts and circumstances of the case and law the Tribunal was right in law in holding that part of income assigned to another trust M/s.TVS Shriram Growth Fund on behalf of the same beneficiaries and assessed in their hands should not be excluded from the income of the assessee?

6.Without prejudice to our contention that no income is taxable in the hands of the assessee, if the entire income is held to be taxable in assessee's hand corresponding expenditure earned should also be allowed as deduction."

3.Heard Mr.Percy Pardiwalla, learned Senior Counsel for M/s.Subbaraya Aiyar, Padmanabhan and Ramamani, learned counsel for the appellant/assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the respondent/Revenue.

4.In the light of the decision of this Court in the case of CIT vs. M/s.TVS Shriram Growth Fund [T.C.A.Nos.890 of 2018 etc., batch : dated 28.09.2020], this appeal filed by the assessee requires to be allowed and the substantial questions of law are to be answered in favour of the assessee. The operative portion of the judgment dated 28.09.2020 reads as follows:-

"18.The broad issues which would fall for consideration are whether the assessee Trust is a determinate Trust or indeterminate Trust. The Assessing Officer came to the conclusion that it is an indeterminate Trust, as the list of beneficiaries has not been specifically set out in the Deed of Trust. The other issue would be whether if in case, the beneficiaries are assessed for the income arising from the Trust and whether it is determinate or indeterminate can the trust be assessed once over again. The third issue would be whether merely because the names of the beneficiaries are not mentioned in the Trust Deed, but shown as beneficiaries and are identifiable and having been assessed whether the Trust can be assessed again. In fact, the Tribunal ought to have followed the decision of the Division Bench of this Court in the case of P.Sekhar Trust (supra). However, the same has been distinguished by the Tribunal in the case of TVS Investments I Fund by observing that the said judgment is not applicable to the facts of the case because in it, the beneficiaries are incorporated on the day of the institution of the Trust Deed and moreover, they did not receive any income in that year. Unfortunately, the Tribunal in the case of TVS Investments I Fund, did not fully appreciate the finding rendered by the Hon'ble Division Bench of this Court and post a wrong question, which led to a wrong answer. For better appreciation, we quote the relevant paragraphs of the judgment in P.Sekhar Trust (supra) hereunder:-

"11. Section 5 of the Act deals with the scope of the total income of any previous year of residents and non residents. Section 4 of the Act deals with the charge of income tax in respect of total income of the previous year of every person 'subject to the

provisions of this Act'. Chapter XV of the Act deals with the liability in special cases. Representative assessee is dealt in Section 160 of the Act. Section 160(1)(iv) of the Act provides that in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any wakf deed, which is valid under the Musalman Wakf Validity Act, 1913 (6 of 1913) receives or is entitled to receive on behalf of or for the benefit of any person such trustee or trustees will be representative assessee. Section 161 provides for the extent of the liability of the representative assessee to the effect that every representative assessee as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in Chapter XV, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

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16.. Thus, the scheme of the Act, the statutory provisions, as well as the line of judgments referred to above clearly state that though Section 5 referred to total income of the person whose income is being assessed and the charge on income tax under Section 4 of the Act is on the total income, what could be taxed in the hands of the representative assessee is only the income which the beneficiaries could be said to have received or to be deemed to have received in India or in whose favour the income has accrued or arises or is deemed to accrue or arise to him in India; or accrues or arises

to him outside India during the relevant year. Though the Trust may receive the income, the extent to which the same can be taxed is to the extent to which tax would be leviable and recoverable from the beneficiaries. Section 161 of the Act specifically provides that the tax to be levied on the representative assessee and to be recovered from him is to be 'in the like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.' (emphasis supplied)

17. Section 164 of the Act gets attracted only when the shares of the beneficiaries are unknown, which is manifest from the marginal heading of that Section itself, viz., Charge of tax where the share of the beneficiaries is unknown. That Section comes into play only where any income or any part thereof is not specifically receivable on behalf of or for the benefit of any one person or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown, and in such case, the relevant income, or part of the relevant income shall be charged at the maximum marginal rate.

18. From this, it is clear that in order to attract Section 164(1) of the Act, the beneficiaries on whose benefit, such income or such part thereof is receivable are indeterminate and unknown."

19. The legal position qua the applicability of provisions of Section 14(1) of the Act has been thoroughly examined by the Tribunal and by an elaborate order, the Tribunal has held in favour of the assessee. We find that the Tribunal rightly took note of the statutory provisions and the law governing this subject and arrived at a conclusion. The view taken by the Bangalore Bench of the Tribunal was affirmed by the High Court of Karnataka on the following terms:-

"6. As such, in our view the matter should rest as the finding of fact for the simple reason that whether the Trust Deed

provides for shares of the beneficiaries which are determinable or non-determinable would vary from facts to facts of each Trust including that of the deed of trust etc. Such finding of fact can be arrived at after interpretation of the terms and conditions of the Trust Deed as well as the other facts and circumstances which may be germane to reach the conclusion on the finding of fact. If the matter is to rest on the question of finding of fact, in our view, such question of finding of fact would be outside the scope of judicial review in the present appeals which would be limited to substantial questions of law.

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10. In our view, the contention is wholly misconceived for three reasons. One is that by no interpretative process the explanation to Section 164 of the Act, which is pressed in service can be read for determinability of the shares of the beneficiary with the quantum on the date when the Trust deed is executed and the second reason is that the real test is the determinability of the shares of the beneficiary and is not dependent upon the date on which the trust deed was executed if one is to connect the same with the quantum. The real test is whether shares are determinable even when even or after the Trust is formed or may be in future when the Trust is in existence. In the facts of the present case, even the assessing authority found that the beneficiaries are to share the benefit as per their investment made or to say in other words, in proportion to the investment made. Once the benefits are to be shared by the beneficiaries in proportion to the investment made, any person with reasonable prudence would reach the conclusion that the shares are determinable. Once the shares are determinable amongst the beneficiaries, it would meet with the requirement of the law, to come out from the applicability of Section 164 of the Act.

11. Under the circumstances, we cannot accept the contention of the Revenue that the shares were non-determinable or the view taken by the Tribunal is perverse. On the contrary, we do find that the view taken by the Tribunal is correct and would not call for interference so far as determinability of the shares of the beneficiaries are concerned.

12. Once the shares of the beneficiaries are found to be determinable, the income is to be taxed of that respective sharer or the beneficiaries in the hands of the beneficiary and not in the hands of the Trustees which has already been shown in the present case.

13. Under the circumstances, in any case, it cannot be said that the Tribunal has committed error. Accordingly, the question is answered in affirmative against the Revenue and in favour of the assessee."

20. Thus, in the light of the above, the substantial questions of law framed for consideration in these appeals are required to be answered against the appellant/Revenue."

5. Thus, by applying the above decision to the assessee's case, this tax case appeal is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal 'D' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)4, Chennai.
3. The Income Tax Officer Non-corporate ward 3(5) Chennai-34.

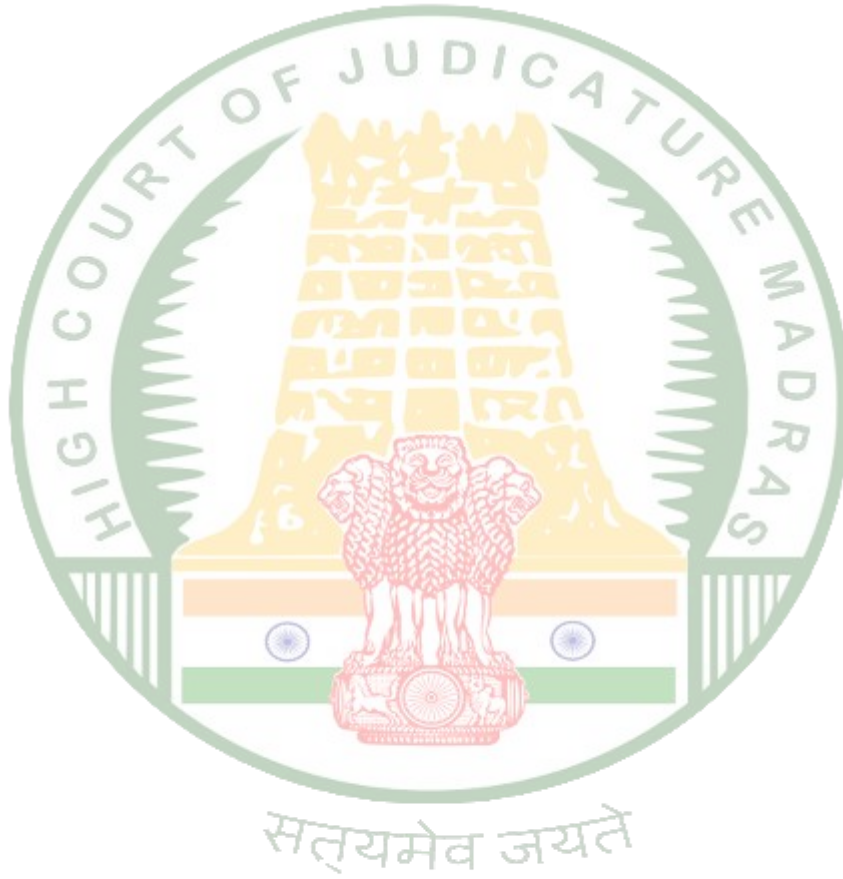
4. The Income Tax Officer, BW XV(2), Chennai-34.

+lcc to M/s.Subbaraya Aiyar, Advocate, S.R.No.31801

+lcc to Mr.T.Ravi Kumar, Advocate, S.R.No.31967

T.C.A.No.319 of 2018

SSD(CO)
CS/27/11/2020



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