

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.7.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.485 OF 2018

(heard through video conferencing)

The Commissioner of Income Tax,
Chennai

...Appellant

Vs

M/s.Shardlow India Ltd.,
Chennai-11.

...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 13.4.2016 made in ITA.No.774/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2007-08 against the order of the Commissioner of Income Tax (Appeals)-15 Chennai-34 dated 27/02/2015 and Pertains to assessment year 2007-2008 against the order of the Deputy Commissioner of Income Tax, Company Circle -VI (2) Chennai-34 dated 31/12/2013.

For Appellant : Mr.J.Narayanaswamy, SSC

For Respondent : Mr.R.Vijayaraghavan for
M/s.Subbaraya Aiyer
Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the Revenue and Mr.R.Vijayaraghavan, learned counsel appearing on behalf of M/s.Subbaraya Aiyer Padmanabhan, learned counsel on record for the respondent.

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1951 (for short, the Act) is directed against the order dated 13.4.2016 made in ITA.No.774/Mds/2015 on the

file of the Income Tax Appellate Tribunal, Chennai 'B' Bench for the assessment year 2007-08.

3. The appeal has been admitted on 04.9.2018 on the following substantial questions of law :

"(i) Whether on the facts and in circumstances of the case and in law, Tribunal was right in holding that assessee is entitled for exemption under Section 47 (v) with respect to the transfer of land to M/s.Simpson & Co. Ltd.?"

(ii) Whether on the facts and in circumstances of the case and in law, Tribunal was right in holding that whole of the share capital of the assessee/subsidiary company is held by the holding company viz. M/s.Simpson & Co Ltd., even though 25 shares were held by persons other than the holding company?

(iii) Whether on the facts and in circumstances of the case and in law, Tribunal was correct and justified in ignoring the principles laid down in (AAR) 348 ITR 368 on identical issue?

(iv) Whether on the facts and in circumstances of the case and in law, Tribunal was correct in ignoring the provisions of the Companies Act, as per which only the person in whose name the shares are entered in its registers can only be treated as shareholders and hence M/s.Simpson & Co Ltd., is not 100% of the shares of the assessee company? and

(v) Whether on the facts and in circumstances of the case in law, Tribunal was correct in ignoring the difference between provisions of Section 47(iv) and (v) wherein holding by nominee is specifically recognized in Section 47(iv) whereas Section 47(v) stipulates whole of the share capital to be held by the holding company?"

4. The assessee, which is a public limited company, filed the return of income for the assessment year under consideration i.e 2007-08 returning an income of -NIL-. The return was processed under Section 143(1) of the Act and later, the Assessing Officer proceeded with the regular assessment. The assessment was reopened on 06.8.2013 by issuing a notice under Section 148 of the Act on the ground that the assessee transferred some portion of its land at Sembium to its holding company namely M/s.Simpson & Co. Ltd., for a consideration of

Rs.375 lakhs resulting in a profit on sale of asset and the same was not offered to tax under the head 'capital gains' against the assessee on the ground that the assessee company is a 100% subsidiary of M/s.Simpson & Co. Ltd. by referring to Section 47 (v) of the Act.

5. On perusal of the records, the Assessing Officer found that 25 shares of the assessee company out of 80 lakhs shares were held by the nominees of the holding company namely M/s.Simpson & Co. Ltd. Therefore, the Assessing Officer held that the assessee was not eligible for exemption of capital gains as per the provisions of Section 47(v) of the Act.

6. Aggrieved by the order of assessment dated 31.12.2013, the assessee filed an appeal before the Commissioner of Income Tax (Appeals)-15, Chennai-34 [for brevity, the CIT (A)], who, by order dated 27.2.2015, dismissed the same. Aggrieved by that, the assessee filed an appeal before the Tribunal, which allowed the appeal by the impugned order, which is called in question in the above tax case appeal by the Revenue.

7. The facts, which were not disputed by the Revenue, are that the holding company has 80 lakhs share, out of which, 79,99,975 shares are held by the holding company themselves namely M/s.Simpson and Co. Ltd., and the balance 25 shares are held by six individuals, who have been nominated by the holding company. The explanation offered was that a public limited company should have minimum of seven shareholders. Further, it was stated that those six individuals, who were nominated by M/s.Simpson and Co. Ltd., have no individual right as a shareholder and their holding is for and on behalf of M/s.Simpson and Co. Ltd. This very fact was not disputed by the Revenue before all the forums.

8. The argument of Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the Revenue is that the distinction has been clearly brought out if one reads Section 47 (iv) and Section 47(v) of the Act and it is clear that the word 'nominees' is not present in Clause (v) to Section 47 of the Act and therefore, the contention advanced by the assessee does not merit acceptance.

9. Though, at the first blush, the contention advanced by Mr.J. Narayanaswamy, learned Senior Standing Counsel is appealing, on a closer scrutiny of the purpose, for which, Section 47 of the Act was introduced, we are convinced to take a decision against the Revenue. We support such a conclusion with the following reasons :

Section 47 of the Act deals with transaction not regarded as transfer. Therefore, a purposive interpretation has to be given to the said provision. Otherwise, as rightly

contended by the learned counsel appearing for the respondent, the provision itself would become redundant. Section 47(v) of the Act states that nothing contained in Section 45 of the Act shall apply to any transfer of capital asset by subsidiary company to the holding company if (a) the whole of the share capital of the subsidiary company is held by the holding company, and (b) the holding company is an Indian company. The fact that the company is an Indian company is not disputed.

10. The dispute raised by the Revenue is that whole of the share capital of the subsidiary company is not held by the holding company as there are six individual shareholders.

11. As pointed out earlier, the total number of shares are 80 lakhs, out of which, 79,99,975 shares are held by the holding company. This fact is also not disputed by the Revenue. The remaining 25 shares are held by six individuals. The explanation offered by the assessee is that under the Companies Act, a public limited company should have a minimum of seven shareholders. The individuals are nominees of the holding company and they have no individual right, which facts were also not disputed. Therefore, on facts, it has to be held that whole of the share capital of the subsidiary company is held by the holding company in the instant case.

12. The reliance placed on the decision of the Bombay High Court in the case of CIT Vs. M/s.Papilion Investments Private Limited [2009-TIOL-491-HC-Mum-IT] merits acceptance. In the said case, a more or less identical factual situation was taken into consideration and it was held that the beneficial ownership of the holding company is to be taken note of and a proper interpretation is not given to the facts, as it would render the provisions of Section 47(v) of the Act redundant. The entire decision reads as follows :

"1. Heard learned Counsel for the parties.

2. The Tribunal, in paragraph No.9 of its order, has recorded a categorical finding, which reads as under: "9. In the case before us, and in view of the provisions of the Companies Act, 1956, it is not possible for the PFIPL to have less than two shareholders. As a matter of fact, there cannot be any company in India which has less than two members i.e. shareholders. Now the requirement of Section 47(v) is that the whole of the share capital of the subsidiary company should be held by the holding company. The whole of the share capital being held by the holding company is

certainly not the same thing as whole of the share capital being held in the name of the holding company. In fact, that situation is a legal impossibility in India. In case one is to proceed on the basis that entire share capital of the subsidiary company should be held in the name of the holding company, there cannot be any situation in which section 47(v) can apply. That is certainly not an interpretation which can be termed as ut res magis valeat quam pereat, i.e. to make the statute effective rather than making it redundant. As held by Hon'ble Supreme court, in the case of CIT Vs. Teja Singh (35 ITR 408), a construction which results in rendering a provision redundant must be avoided. For this reason alone, the interpretation canvassed by the revenue is to be rejected.

3. Having seen the finding recorded by the Tribunal, no fault can be found with the view taken by the Tribunal. In this view of the matter, appeal stands dismissed for want of substantial question of law with no order as to costs."

13. In the light of the above discussion, we hold that the order passed by the Tribunal does not call for any interference.

14. Accordingly, the above tax case appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

RS

To

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

2. The Commissioner of Income Tax (Appeals)-15,
Chennai-34

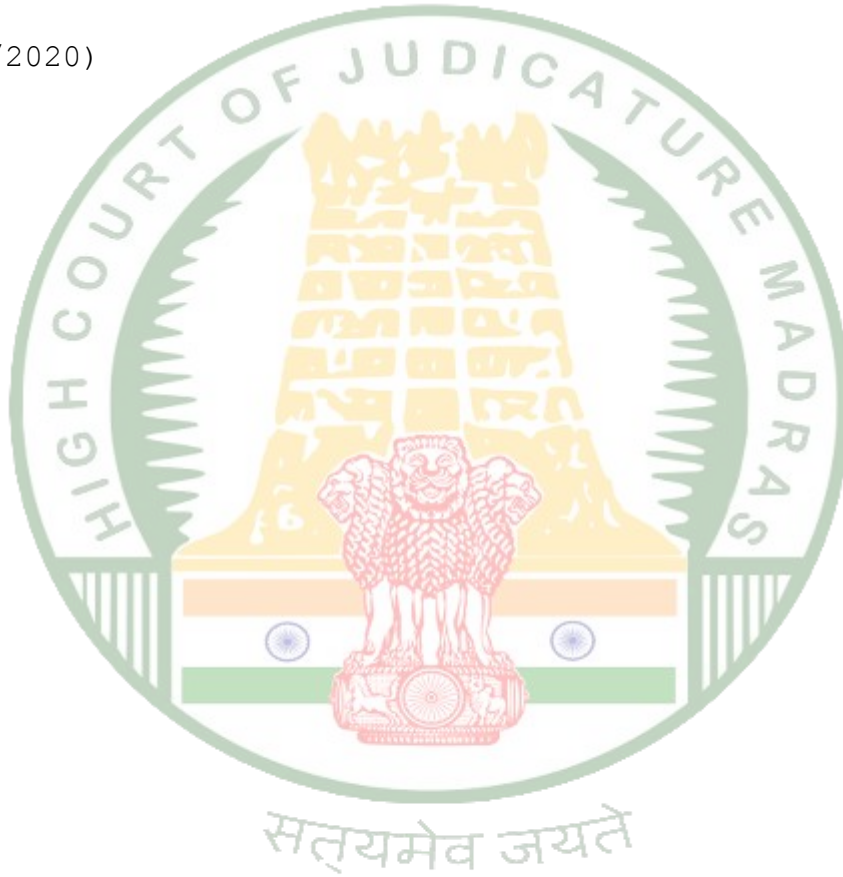
3. The Deputy Commissioner of Income Tax,
Company Circle -VI(2)
Chennai-34

+1cc to M/s.Subbaraya Aiyer, Advocate SR.No.24787

TCA.No.485 of 2018

SS (CO)

GMV (03/08/2020)



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