IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

T.C.A.No. 356 of 2009

M/s. Nilakantan & Sons Pvt. Ltd.,
No.2, First Floor, Gokul Tower,
7, C.P.Ramaswamy Road,
Alwarpet, Chennai - 600 018.
(PAN: AAA CN 2125 L) ..Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle IV (4), Chennai. ..Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai dated 26.09.2008 in ITA No.1775/Mds/2006 for the assessment year 2000-01 and against the order of the commissioner of Income Tax (Appeals)-V, Chennai, dated 31.03.2006 made in ITA No.390/2005-2006 and against the order of the Assistant Commissioner of Income Tax Company Circle IV(4), Chennai-34 dated 12.11.2005 made in P.A.No/GI No.AAACN2125L/NI-54.

For Appellant : Mr. S.Sridhar

For Respondent : Mr. Karthick Ranganathan

J U D G M E N T
(Judgment was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Assessee, challenging the order dated 26.09.2008 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai, in I.T.A.No.1775/Mds/2006, relating to the assessment year 2000-01.

2.By order dated 28.04.2009, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

"1.Whether in law, receipt by way of security deposit by the appellant company from another company M/s.Nilakantan & Brothers Constructions Pvt. Ltd could be taxed as deemed dividend in the hands of the appellant when the appellant is admittedly not a shareholder in the paying company nor the paying company is a shareholder in the appellant company, in the light of the decisions of the Supreme Court in the case of C.P.Sarathy Mudaliar Vs. CIT 83 ITR 170 SC and Rameshwarlal Sanvarmal Vs. CIT 122 ITR 1 SC?

2.Whether in law, security deposit received by the appellant from the hirer for the user of the appellant's machinery could be treated as advance or loan within the meaning S.2 (22) (e) of the Income Tax Act?

3.Whether in law, the Income Tax Appellate Tribunal was justified in allowing the department's appeal without validly and consciously reversing the Commissioner of Income Tax (Appeals)'s order holding deemed dividend, if any, cannot be assessed in the assessment year 2000-01, in view of payment in earlier assessment year reducing the accumulated profits to Nil in the hands of the paying company, especially in view of Supreme Court's decision in CIT Vs. G.Narasimhan 236 ITR 327 SC?"

3.When the matter was taken up for consideration, the learned counsel appearing for both sides, referring to the judgement dated 21.09.2020 passed by a Division Bench of this court in T.C.A. Nos. 512 & 513 of 2018 [Commissioner of Income Tax, Chennai -vs- T.Abdul Wahid & Co.], jointly submitted that the identical question of law was raised therein and the same was decided against the Revenue. The relevant passage of the said judgment is profitably, extracted below:

"11. Section 2(22)(e) of the Act, which defines dividend, an inclusive definition, includes any payment by a company, not being a company in which the public are substantially interested, of any sum made after the 31.05.1987, by way of advance or loan, to a share holder, being a person, who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such share holder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such share holder, to the extent to which the company in either case possesses accumulated profits.

12. The said provision would stand attracted

> when a payment is made by a company, in which public are not substantial interested by way of advance or loan to a share holder, being a person who is the beneficial owner of the shares. On facts, it is clear that the payment has been made to the assessee, a partnership firm. The partnership firm is not a share holder in the company. If such is the factual position, the decision in the case of National Travel Services relied on by the revenue cannot be applied, nor the case of Gopal and Sons, as they are factually distinguishable. The records placed before the assessing officer clearly shows the nature of transaction between the firm and the company and it is neither a loan nor an advance, but a deferred liability. These facts have been noted by the assessing officer. In such circumstances, this Court is of the view that the Tribunal rightly reversed the order passed by the CIT(A) affirming the order of the assessing officer.
>
> For the above said reasons, we find no grounds to interfere with the order passed by the Tribunal and accordingly, dismisses the present appeals and answer the substantial question of law against the Revenue. Consequently, connected miscellaneous petition is closed. No costs.”

Therefore, the learned counsel prayed that this appeal may be disposed of in the light of the aforesaid judgement.

4.Following the aforesaid judgment, the substantial questions of law are answered against the Revenue and this appeal filed by the appellant / assessee stands allowed by setting aside the order passed by the Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Assistant Commissioner of Income Tax
   Company Circle IV (4), Chennai.

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

3. The Commissioner of Income Tax,
   (Appeals) - V, Chennai.

4. The Assistant Commissioner of Income Tax,
   Company Circle IV (4),
   Chennai - 34.

+1cc to Mr.S.Sridhar, Advocate, S.R.No.61026

T.C.A.No. 356 of 2009

BR(CO)
RGA(21/12/2021)