

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal No. 409 of 2009

M/s.Aswathanarayana & Eswara,
Old No.61, New No.117, Royapettah High Road,
Jammi Buildings, Mylapore
Chennai-600 004. Appellant

v.

The Assistant Commissioner of Income Tax,
Circle-I,
Chennai. Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax, 1961 against the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai dated 21.11.2008 in ITA No.550/Mds/2008 for the assessment year 1999-2000, preferred against the order of Commissioner of Income Tax Appeals (VI), Chennai dated 18/02/2008 in ITA No.163/06-07 filed against the Assessment order of the Assistant Commissioner of Income Tax, Circle-I, Chennai-34 dated 28/09/2006 for the Assessment Year 1999-2000.

For Appellant : Mr.R.Venkat Narayanan

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

JUDGMENT

(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the orders passed in ITA No.550/Mds/2008 in respect of the Assessment Year 1999-2000 on the file of the Income Tax Appellate Tribunal, "D" Bench, Chennai, the assessee has filed the above appeal.

2. The main issue that arise for consideration in this appeal is regarding confirmation of disallowance of expenses incurred.

3. At the time of admission of the above appeal, the following substantial question of law arose for consideration:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding the expenditure incurred towards foreign education and training expenses of a partner Shri H.E.Srinivas Shastry, son of one of the partners Shri. Eswara, as personal in nature and hence not an allowable deduction?"

4. Mr. R.Venkat Narayanan. learned counsel appearing for the appellant submitted that in the Tax Case Appeal No.929 of 2008, the Hon'ble Division Bench of this Court, by its Judgment dated 07.08.2018, in respect of the very same assessee, decided the question of law that has been raised in the present appeal in favour of the assessee and against the revenue. The relevant paragraph in the Judgment of the Hon'ble Division Bench dated 07.08.2018 made in T.C.A. No.929 of 2008 reads as follows:-

" 5. This appeal has been admitted on 09.07.2008, on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding the expenditure incurred towards foreign education and training expenses of a partner Shri H.E.Sriprakash Shastry, son of one of the partners Shri. Eswara, as personal in nature and hence not an allowable deduction?"

.....

24. We have examined the facts placed before the lower authorities and we find that the assessee is a partnership firm consisting of two brothers, two sons of one brother. All the four partners are duly qualified Engineers (B.E.) and the firm is carrying on Engineering Consultancy Profession for leading Indian Corporate Clients. One of the partner's son, Mr.H.E.Sriprakash Shastri, joined the firm in April 2000 after completing his B.E., degree. He had taken active part in the conduct of the business of the firm from the date of his induction as partner. Even while doing his B.E. Degree course, he is stated to have been attending the office of the firm and getting acquainted with reinforced concrete design, planning estimates and construction management.

After graduation, he was made a working partner of the firm and he has worked on several projects, which have been mentioned by the assessee. In February 2001, he was sent to Australia for higher education. The duration of the course and training is for a period of two semesters and the course underwent was directly related to the profession carried on by the firm and this accrued in favour of the firm, as could be seen from the facts placed before the CIT(A), where the professional fee received by the firm had substantially increased.

25. On return, after completion of the post graduate degree, the partner continued to work for the firm and materials were placed to show that several important contracts have been secured by the firm, which they attribute to the educational qualification and expertise acquired by the partner of the firm abroad. There was no material placed by the Revenue to demonstrate that any part or whole of the stand taken by the assessee was either false or untrue. Viewed from this angle, this Court is fully satisfied that this is not a case where there is a misuse of the provision of Section 37 of the Act to foist a personal expenditure as a business expenditure. Therefore, we are of the considered view that the expenditure was allowable and the authorities concurrently erred in not taking into consideration the factual position placed, in spite of specific grounds raised before the Tribunal, which would render the decision perverse.

26. The learned Standing Counsel for the Revenue pointed out that no ground has been raised by the assessee stating that the finding rendered by the Assessing Officer, CIT(A) and the Tribunal are perverse.

27. Perusal of the grounds of appeal filed before the CIT(A) shows that the assessee has specifically raised the point regarding non-consideration of the materials placed before the assessing authority. Yet the CIT(A) did not make an endeavour to examine the stand taken by the assessee, resulted in non-consideration of the materials placed. This undoubtedly would be perversity writ large on the face of the orders passed by the Assessing Officer

and the CIT(A). Therefore, in our considered view, the assessee cannot be non-suited merely because, he has not used the expression "perverse" in the grounds of appeals before the CIT(A) as well as before the Tribunal. There is no dispute raised by the Revenue with regard to the factual position that the concerned partner went abroad for completion of the higher studies/education and on his return continued with the firm. Non-consideration of the factual issues, which are germane and which ought to have been considered, leads to perversity. Thus, the Tribunal committed serious error of law thereby vitiating the entire proceedings more particularly, the aspects which goes to the root of the matter.

28. Thus, for the above reasons, we are of the considered view that the authorities concurrently committed serious error of law and failed to address the issues which ought to have been addressed, ignored materials which ought to have been considered and applied the decisions which are wholly distinguishable on facts.

29. In the result, the tax case appeal is allowed, the order passed by the tribunal is set aside and the substantial question of law is answered in favour of the assessee and against the Revenue. No costs.

5. The Hon'ble Division Bench of this Court took into consideration the Judgments of this court reported in (2001) 250 ITR 0769 [M.Subramaniam Bros. vs. Commissioner of Income Tax] and (2002) 258 ITR 0306 [Commissioner of Income Tax vs. R.K.K.R Steels] and decided the question of law in favour of the assessee.

6. On a reading of the judgment of the Hon'ble Division Bench of this Court, it is clear that the substantial question of law that has been raised in the present appeal has been decided in favour of the assessee. Further, it is brought to the notice of this court that the judgment passed in T.C.A.No.929 of 2008 has become final for the reason that the revenue has not filed any appeal as against the same. Therefore, we are of the considered view that the present appeal is covered by the judgment made in T.C.A.No.929 of 2008.

7. In these circumstances, following the Judgment of the Hon' ble Division Bench of this Court dated 07.08.2018 made in T.C.A.No.929 of 2008, the order passed by the Income Tax Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside,. The question of law is decided in favour of the appellant-assessee. The Tax Case Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rj
To

1. The Assistant Commissioner of Income Ttax,
Circle-I,
Chennai..
2. The Assistant Registrar,
Income Tax Appellate Tribunal,
"D" Bench, Chennai.
3. The Commissioner of Income Tax (Appeals)-VI,
Chennai-34.

+1cc to Mr.Subbaraya Aiyar, Advocate Sr.20969
+1cc to Mr.T.Ravikumar, Advocate Sr.21000

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srg 03/05/2021

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