



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

Tax Case Appeal Nos.920 to 922 of 2013
& M.P.Nos.1, 1 of 2013 in TCA.Nos.921 & 922 of 2013

Commissioner of Income Tax,
Chennai

... Appellant in all the TCAs

Vs.

T. Jayachandran,
Prop.M/s.Chandrakala & Co.,
167, Thambu Chetty Street,
Chennai - 600 001.

... Respondent in all the TCAs

Common Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 01.07.2013 passed in ITA.Nos.759, 760 & 761/Mds/2013 for the assessment years 1991-92, 1992-93 and 1993-94, against the order of the Commissioner of Income Tax (Appeals)-IX, 121, Mahatma Gandhi Road, Chennai 600 034 and made in ITA No.369, 370 and 371/05-06, dated 28.12.2012 in GIR.No/PAN-8577-J for the Assessment Years 1991-92 to 1993-94 and against the order of the Assistant Commissioner of Income Tax, Business Circle VIII, 1st Floor, Kannammai Building, No.611, Annasalai, Chennai 600 006, dated 22.07.2005.

For Appellant : Mr.M. Swaminathan
in all the TCAs Senior Standing Counsel
assisted by Mrs.V.Pushpa

For Respondent : Mr.M.P.Senthil Kumar
in all the TCAs

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R. HEMALATHA, J.)

These appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the orders dated 01.07.2013 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for



brevity) in ITA.Nos.759, 760 & 761/Mds/2013 for the assessment years 1991-92, 1992-93 and 1993-94.

2. The Assessee (respondent) is an individual and Proprietor of M/s.Chandrakala & Co., a Stock Broker registered with the Madras Stock Exchange. During the assessment years 1991-92, 1992-93 and 1993-94, the Assessing Officer disallowed the payments made by the assessee to Public Sector Undertakings. On an appeal, the Income Tax Appellate Tribunal vide its order in ITA.No.s.2585/94 and 255 & 2297/Mds/96 dated 05.01.2005 confirmed the additions made by the Assessing Officer. Thereafter, the Assessing Officer initiated penalty proceedings and levied minimum penalties of Rs.8,25,32,755/-, Rs.1,40,55,563/- and Rs.17,68,928/- respectively for the assessment years 1991-92, 1992-93 and 1993-94 vide orders dated 22.07.2005 under Section 271 (1) (c) of the Act holding that the assessee furnished inaccurate particulars of income.

3. Aggrieved over the above orders passed by the Assistant Commissioner of Income Tax, appeals were filed by the assessee in ITA.Nos.369, 370 & 371/2005-06 before the Commissioner of Income Tax (Appeals). The appeals were allowed on 28.12.2012. Thereafter, the Revenue filed appeals before the Income Tax Appellate Tribunal. In the meanwhile, the Deputy Commissioner of Income Tax, Chennai, also filed a Civil Appeal in C.A.No.4341 of 2018 (arising out of Special Leave Petition (c) No.22112/2013 before the Hon'ble Supreme Court against the order of this High Court dated 29.10.2012 in Tax Appeal No.368 of 2005 wherein the Division Bench of this court allowed the appeal filed by the respondent/assessee, by absolving the additional tax liability imposed by the Assessing Officer on 25.01.1996.

4. Since the Income Tax Appellate Tribunal confirmed the order of Commissioner of Income Tax (Appeals), the present appeals are filed by the Revenue on the following substantial question of law :-

(i) Whether under the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal right in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the levy of penalty under Section 271 (1) (c) ?

5.. We have heard Mr.M. Swaminathan, learned Senior Standing counsel assisted by learned counsel Mrs.V.Pushpa, and Mr.M.P. Senthil Kumar, learned counsel for the respondent/assessee.



6. Counsels on both sides contended that the Hon'ble Supreme Court dismissed the appeals filed by the revenue and the observations and conclusion of the Hon'ble Supreme Court in Civil Appeal No.4341 of 2018 arising out of Special Leave Petition (c) No.22112 of 20123 are extracted hereunder:

"10) The answer to the short question whether the alleged interest payable to the PSUs can be assessed as an income of the Respondent depends on the determination of true nature of relationship between the Indian Bank and the Respondent with regard to the transactions in question and the capacity in which he held the amount of 14,73,91,000/-. Now, coming to the question of relationship between the Indian Bank and the Respondent, the normal settlement process in Government securities is that during transaction banks make payments and deliver the securities directly to each other. The broker's only function is to bring the buyer and seller together and help them to negotiate the terms for which he earns a commission from both the parties. He does not handle either cash or securities. In this respect, the broker functions like the broker in the inter bank foreign exchange market. The conduct of the Respondent in the transaction in question cannot be termed to be strictly within the normal course of business and the irregularities can be noticed from the manner in which the whole transactions were conducted. However, the same cannot be basis for holding the Respondent liable for tax with regard to the sum in question and what is required to be seen is whether there accrued any real income to the Respondent or not.

11) It is required to be seen in what capacity the Respondent held the said amount-independently or on behalf of the Indian Bank. The Assessing Officer, while passing order dated 25.01.1996, has held that there exists no agreement between the Respondent and the Indian Bank about the payment of additional interest to the PSUs and there was no overriding title in respect of the additional interest for the PSUs. However, the position in this regard is very much settled that an agreement need not be in writing but can be oral also and the same can be inferred from the conduct of the parties.



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12) Further, while considering the claim of the Respondent and the view of the Assessing Officer, how the bank itself had treated the Respondent, is a matter of relevance. At the outset, learned counsel appearing on behalf of the Revenue contended that the proceedings under the Income Tax Act are independent proceedings and the High Court committed a grave error in relying on the findings of the criminal Court. We do not find any force in the contention of the appellant herein as the High Court has not held that the findings of the criminal court are binding on the Revenue authorities. Rather the High Court was of the view that the findings arrived at by the criminal court can be taken into consideration while deciding the question as to the relationship between the parties to the case. When the findings are arrived by a criminal court on the evidence and the material placed on record then in absence of anything shown to the contrary, there seems to be no reason as to why these duly proved evidence should not be relied upon by the Court. The High Court has specifically appraised the findings given by the CBI Court in this regard. The relationship between the Indian Bank and the Respondent is very much clear by the evidence led during the criminal proceedings. The Executive Director of the Bank has specifically spoken about the role of the Respondent as a broker specifically engaged by the Bank for the purchase of securities and that the Bank has included the interest money too in the consideration paid, for the purpose of taking demand drafts in favour of PSUs. Further, the evidence led by other bank officials points out that the price of securities itself were fixed by the bank authorities and as per their directions the Respondent had purchased the securities at the market price and the differential amount was directed to be used for taking demand drafts from the bank itself for paying additional interest to the PSUs. Further, the letter dated 25.03.1994 by the Bank wherein the Bank had acknowledged the receipt of Demand Drafts taken by the Respondent gives an unblurred picture about the capacity of the Respondent in holding the amount in question. Consequently, the conduct of the parties, as is recorded in the criminal proceedings showing the receipt of amount by the broker, the purpose of receipt and the demand drafts taken by the broker at the instance of the bank are sufficient to prove the fact that the Respondent acted as a broker to the



Bank and, hence, the additional interest payable to the PSUs could not be held to be his property or income.

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13) The income that has actually accrued to the Respondent is taxable. What income has really occurred to be decided, not by reference to physical receipt of income, but by the receipt of income in reality. Given the fact that the Respondent had acted only as a broker and could not claim any ownership on the sum of Rs. 14,73,91,000/- and that the receipt of money was only for the purpose of taking demand drafts for the payment of the differential interest payable by Indian Bank and that the Respondent had actually handed over the said money to the Bank itself, we have no hesitation in holding that the Respondent held the said amount in trust to be paid to the public sector units on behalf of the Indian Bank based on prior understanding reached with the bank at the time of sale of securities and, hence, the said sum of Rs. 14,73,91,000/- cannot be termed as the income of the Respondent. In view of the above discussion, the decision rendered by the High Court requires no interference."

7. In view of the dismissal of the appeal filed by the Revenue in respect of the tax payable by the assessee by the Hon'ble Supreme Court, the present appeals, which are filed against the levy of penalty, are also liable to be dismissed. Hence, following the judgment of the Hon'ble Supreme Court, the question of law is decided against the Revenue and in favour of the assessee. Accordingly, the appeals are dismissed. No costs. Consequently, connected M.Ps are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

gv

To

1. The Income Tax Appellate Tribunal,
Madras "D" Bench



2. The Commissioner of Income Tax Appeals-IX,
121, Mahatma Gandhi Road,
Chennai-600 034.

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3. The Assistant Commissioner of Income Tax,
Business Circle-VIII,
1st Floor, Kannammai Building,
No.611, Annasalai, Chennai-600 006.

+lcc to Mr.M.Swaminathan, Advocate Sr.28773

+lcc to Mr.M.P.Senthilkumar, Advocate Sr.28685

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