IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

T.C.A.No.201 of 2016

M/s.Talent Pro India HR Private Ltd.,
New No.64, Old No.30,
'Briley One' III Floor, Ethiraj Salai,
(Next to kanchi Hotel), Egmore,
Chennai-600 008. .. Appellant/ Appellant

-vs-

Commissioner of Income Tax – 3,
Chennai. .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 28.08.2015 made in I.T.A.No.1191/Mds/2015 on the file of the Income Tax Appellate Tribunal 'SMC' Bench, Chennai for the assessment year 2009-10.

Against the order of the Commissioner of Income Tax Appeals II, Chennai.34 dated 30/012015 old ITA No.1192/2013-2014 New ITA No. 476/CIT A-II/2013-2014 in the Assessment Year 2009-2010

Against the order of the Commissioner of Income Tax Company circle III(1) Chennai-34 dated 29/11/2011 GIR.No/ PAN AABCP9823A in the Assessment Year 2009-2010

For Appellant : Mr.N.V.Balaji

For Respondent : Ms.V.Pushpa,
Junior Standing Counsel

JUDGMENT

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

This appeal, by the appellant/assessee, filed under Section

260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order dated 28.08.2015, made in I.T.A.No.1191/Mds/2015 on the file of the Income Tax Appellate Tribunal 'SMC' Bench, Chennai (for brevity "the Tribunal") for the assessment year 2009-10.

2.The appeal was admitted on 22.03.2016, on the following substantial questions of law:-

> "(i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of the Lower Authorities, which brought to tax the notional income on the advances made by the appellant to its subsidiary? and
>
> (ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that 12.5% of the advances made by the appellant to its subsidiary is to be assessed as income of the appellant, though the advance was an interest free advance?"

3.We have heard Mr.N.V.Balaji, learned counsel for the appellant/assessee and Ms.V.Pushpa, learned Junior Standing Counsel for the respondent/Revenue.

4.The assessee is a company engaged in the business of providing service like man power planning, recruitment of personnel etc. It filed its return of income for the assessment year under consideration AY 2009-10 returning a loss. The Assessing Officer completed the assessment under Section 143(3) of the Act and assessed the income of the assessee at Rs.5,86,860/-. The Assessing Officer disallowed a sum of Rs.1,21,88,735/- as loans and advances by observing that the assessee had advanced a sum of Rs.6,77,15,194/- to M/s.Interpro Global Pvt. Ltd., a subsidiary company of the assessee and that the said subsidiary company is making profits. Further, the Assessing Officer held that the assessee could not have prudently invested and advanced funds to its own benefits and that the assessee has not chosen to recover the same. Therefore, the Assessing Officer assessed a sum of Rs.1,21,88,735/- being 18% of the amount outstanding as on the last date of the previous year relevant to the assessment year 2009-10. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-11, Chennai (for brevity "the CIT(A)"). The appeal was dismissed by order dated 30.01.2015. Aggrieved by the same, the assessee preferred appeal to the Tribunal, which has been rejected and the same is challenged in this tax case appeal.

5.The question involved is whether the Assessing Officer, the CIT(A) and the Tribunal had dealt with the issue raised by the assessee in a proper perspective. The assessee had contended that there is no specific agreement for charging any interest on the loans and advances to the subsidiary company and therefore, notional income cannot be considered and assessed on the loans and advances to a wholly owned subsidiary. It is further contended that the assessee had not incurred any expenses by way of interest and no addition could have been made, as interest income purported to have been earned. Though such was the contention, both the authorities and the Tribunal were of the view that the subsidiary company, to which the loans and advances were extended by the assessee, is generating sufficient profits and therefore, by no stretch of imagination, it could be considered by the assessee as if the loan extended by them is not recoverable. Further, the Assessing Officer had commented upon the prudence of the assessee as a business man and accordingly, computed the interest at 18%.

6. We find, in the assessment order, the assessee had taken a specific stand that they have not received any interest from the subsidiary company. However, the Assessing Officer proceeded on presumption and completed the assessment. The correctness of such order was tested by the CIT(A), who also concurred with the Assessing Officer by noting that the loan was advanced five years back and no interest was charged and the two sister concerns are profit making companies and also claiming Section 10A exemption. The Tribunal also concurred with the authorities, but granted a small reprieve to the assessee by reducing the rate of interest at 12.5%. Unfortunately, the authorities as well as the Tribunal did not consider the specific stand of the assessee that no income had accrued to the assessee on account of the loans and advances made to the subsidiary company. The question of considering commercial expediency or observing that no prudent man, who runs a loss making company, will extend loans to another profit making subsidiary, which is also enjoying the benefit of Section 10A of the Act. Unless and until, there is evidence available for the authority that for certain other purposes, the loans and advances were extended by the assessee to the subsidiary company, no such adverse presumption could have been drawn against the assessee and no tax can be levied and collected on a presumptive income, as tax can be levied and collected only against real income, which has not been brought out by the authorities or the Tribunal. Therefore, we are of the considered view that the authorities below and the Tribunal committed an error in fixing the rate of interest.

7.For the above reasons, this tax case appeal, filed by the assessee, is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income Tax – 3,
   Chennai.

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

3. The Commissioner of Income Tax (Appeals II),
   Chennai.34

4. The Assistant Commissioner of Income Tax Company Circle (III)
   Chennai.34

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SRA(CO)
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