IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.No.281 of 2011

Commissioner of Income Tax - I
Chennai. ... Appellant

Vs.

M/s.Apollo Hospital Enterprises Ltd,
'Ali Towers' IV Floor.
55, Greams Road,
Chennai - 600 006. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai “D” Bench, dated 25.02.2011 in I.T.A.No.1673/Mds/2010 for the Assessment Year 1998-1999 against the order of the Commissioner of Income Tax Appeals III dated 01.07.2010 in ITA.No.588/09-10/AIII in the Assessment year 1998-99 against the order of the Deputy Commissioner of Income Tax Company Circle 1(1), Chennai 34 dated 23.12.2009, PA / GIR.No. AAACA5443N / AX1-015 in ITNS 65 in the Assessment Year 1998-99.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.N.V.Balaji

JUDGMENT

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

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 25.02.2011 passed by the Income Tax Appellate Tribunal, Bench 'D' Chennai, in I.T.A.No.1673/Mds/2010, relating to the Assessment Year 1998-1999.

2.By order dated 02.08.2011, this court admitted the above tax case appeal on the following substantial questions of law:

> “1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to deduction of lease equalization charge, which was nothing but an amount equal to the dimnution in the value of depreciable lease assets, over and above the depreciation allowed under the Income Tax Act, 1961?
>
> 2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the "professional charges" paid to M/s. PCR Investments was an allowable deduction even though the payment represented non-compete fee which was not allowable, being expenditure of a capital nature as held by the Hon'ble Madras High Court in the cases of Chelpark Co. Ltd. Vs C.I.T. (191 ITR 249) and in the case of Tamil Nadu Dairy Development Corporation Vs. C.I.T. (239 ITR 142) and the other services mentioned in the agreement were not actually rendered and in any case, such services were also in the capital field?"

3.1. When the matter was taken up for consideration, the learned counsel for the appellant / Revenue fairly submitted that the first substantial question of law involved in this appeal has already been considered and decided in favour of the assessee by judgment dated 02.01.2019, passed in TCA.Nos.776 to 778 of 2009, the relevant passage of which, is usefully extracted hereunder:

> "4. Both learned counsel concur on the position that substantial question of law No.1 relating to deduction of lease equalisation charges is covered by a judgment of the Supreme Court in the case of Commissioner of Income Tax VI V. Virtual Software Systems Limited ((2018) 404 ITR 409), wherein the Supreme Court considered the following substantial question of law:
>
> > '5. The short question that arises for consideration before this Court is whether the deduction on account of lease equalisation charges from lease rental income can be allowed under the Income Tax Act, 1961, on the basis of Guidance Note issued by the Institute of Chartered Accountants of India (ICAI)?'

5. The conclusion of the Supreme Court at paragraph nos.16 and 17 of the said judgment is as follows:

> 16) In the present case, the relevant Assessment Year is 1999-2000. The main contention of the Revenue is that the Respondent cannot be allowed to claim deduction regarding lease equalization charges since as such there is no express provision regarding such deduction in the IT Act. However, it is apt to note here that the Respondent can be charged only on real income which can be calculated only after applying the prescribed method. The IT Actis silent on such deduction. For such calculation, it is obvious that the Respondent has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the Guidance Note, the Respondent can show fair and real income which is liable to tax under the IT Act. Therefore, it is wrong to say that the Respondent claimed deduction by virtue of Guidance Note rather it only applied the method of bifurcation as prescribed by the expert team of ICAI. Further, a conjoint reading of Section 145 of the IT Act read with Section 211 (un-amended) of the Companies Act make it clear that the Respondent is entitled to do such bifurcation and in our view there is no illegality in such bifurcation as it is according to the principles of law. Moreover, the rule of interpretation says that when internal aid is not available then for the proper interpretation of the Statute, the court may take the help of external aid. If a term is not defined in a Statute then its meaning can be taken as is prevalent in ordinary or commercial parlance. Hence, we do not find any force in the contentions of the Revenue that the accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act.
>
> 17) To sum up, we are of the view that the Respondent is entitled for bifurcation of lease rental as per the accounting standards prescribed by the ICAI. Moreover, there is no express bar in the IT Act regarding the application of such accounting standards.

6. Accordingly, we answer substantial question of law No.1 in favour of the assessee and against the Revenue."

3.2. Following the aforesaid judgment, which holds the field, the first substantial question of law is answered against the appellant / Revenue.

4.1. As regards the second substantial question of law raised herein, the learned counsel appearing for the respondent submitted that the appellant raised the very same issue in TCA Nos.776 to 778 of 2009, but the same was not even admitted by the Co-ordinate Bench in its order dated 02.01.2019. The said submission has been fairly conceded by the learned counsel for the appellant. In view of the same, the said issue also, will have to be answered against the appellant / Revenue.

5.In fine, the Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kas

To

1. The Commissioner of Income Tax Appellate - III
Chennai

2. The Income Tax Appellate Tribunal,
Chennai, "D" Bench.

3. The Deputy Commissioner of Income Tax
Company circle – 1(1),
Chennai – 600 034.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.9766

T.C.A.No.281 of 2011

MG[co]
NSK 14/03/2022