IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM :

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**
and
THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

T.C.A.No.418 of 2015

Commissioner of Income Tax,
Chennai ... Appellant

Vs.

M/s.Shriram Capital Limited,
Mookambika Complex,
4, Lady Desika Road,
Mylapore,
Chennai 600 004. ... Respondent

Prayer: Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai dated 02.01.2015 in I.T.A.No.721/Mds/2014 for the assessment year 2009-10.

For Appellant : Mr.J.Narayanasamy

For Respondent : Mr.R.Sivaraman

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN,J.)**

This Tax Appeal has been filed by the Income Tax Department against the order dated 02.01.2015 of the Income Tax Appellate Tribunal [hereinafter referred to as the "Appellate Tribunal"] in I.T.A.No.721/Mds/2014.

2. By the Impugned Order, the Appellate Tribunal has reversed the order passed by the Commissioner of Income Tax dated 18.02.2014 under Section 263 of the Income Tax Act, 1961.

3. The present appeal was admitted on 24.07.2014. At the time of admission, the following substantial questions of law were framed by this Court:-

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in setting aside the revision order of the CIT under Section 263 on the ground that the revision order was passed based on a difference of opinion and the assessing officer had considered all the facts necessary while allowing the deduction of Rs.33 crores paid by the assessee to its sister concern when the assessment order does not consider the claim of the assessee.

2. Whether on the facts and in the circumstances of

the case the Tribunal was right in holding that the Section 40a(ia) can be invoked only to the amounts of expenditure which are payable as on last day of the financial year and not the expenditure paid during the financial year.

3. Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the amended second proviso to Section 40a(ia) is declaratory and curative in nature and has a retrospective effect from 01.04.2005 the date on which the proviso was inserted.

4. The respondent had paid a sum of **Rs.33,00,00,000/-** to the following three group companies namely:-

1. M/s.Shriram Chits Karnataka Pvt.Ltd.,
2. M/s.Shriram Chits Pvt. Ltd.,
3. M/s.Shriram Chits Tamilnadu Pvt. Ltd.,

5. These companies had provided services to the respondent for the purpose of business requirement of other group companies of the respondent Company wherein the respondent company held 74% stake. While making the aforesaid payment, the respondent had however failed to deduct tax under Section 194-C of the Income Tax Act, 1961.

6. The Assessing Officer however accepted the respondent Company's contention and had allowed the expenditure of Rs.33 crores paid to these three sister Companies and completed the assessment vide Assessment Order dated 29.12.2011 passed under Section 143(3) of the Income Tax Act, 1961.

7. Under these circumstances, the Commissioner of Income Tax invoked the power under Section 263 of the Income Tax Act, 1961 and issued a notice dated 17.12.2013 to the respondent-assessee to reverse the Assessment Order dated 29.12.2011. The said notice dated 17.12.2013 culminated in an order dated 18.02.2014 was reversed by the Appellate Tribunal. Relevant portion of the said order dated 18.02.2014 of the Commissioner of Income Tax reads as under:-

> 7. I have gone through carefully the facts available on the record and the arguments put forth by the Executive Director. From the nature of transaction, it is clear that the transaction is nothing but contractual in nature. **The assessee company has not deducted the tax deductable at source as per the provsiions of 194-C of the Act. As per the provision of 40(a)(ia), if the TDS liable to be deductible is not deducted by the assessee, then the expenditure of Rs.33 crore claimed by the assessee cannot be allowed for the Assessment year 2009-10. It can be allowed in the year in which, the assessee deducts the tax and remits the**

same to the Government of India A/C.

8. Aggrieved by the same, the respondent-assessee preferred an appeal in ITA.No.724/Mds/2014 before the Appellate Tribunal. The said appeal was allowed by the Appellate Tribunal vide order dated 02.01.2015 with the following observations:-

> 5.2. From the above it is apparent that the Ld.CIT has only examined the agreement which have been already considered by" the Ld. Assessing Officer. Though he has made several observations, there were no other findings other than, non-deduction of tax at source and applicability of Section 40(a)(ia) of the Act. The Ld. A.R. during the course of proceedings before the Ld.CIT had submitted the letters from the recipients of the payments from the assessee company wherein they have stated that they had declared the amount received from the assessee as their income and paid the tax duly. The amended second proviso to Section 40(a).(ia) of the Act was also referred. The Tribunal in the case of Rajeev Kumar Agarwal Vs. Additional Commissioner of Income Tax in ITA No.337/Agra/2013 vide order dated 29h May, 2013 has held. that "the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1t April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No.2) Act, 2004." In such circumstances, it cannot be construed that the Ld. Assessing Oficer had passed the order without application of .mind. He has considered all these facts and had consciously decided the matter. From the above facts, it appears that the Ld.CIT has passed the order U/s.263 based on difference of opinion and by reviewing the issue which was already decided by the

> Ld. Assessing Officer. Moreover. it is pertinent to mention at this juncture that the decision rendered in the case of **Merilyn Shipping and Transpots Vs. Additional CIT** in 16 ITR (Trib) 1 is also in favour of the case of the assessee. In the aforesaid case the order of the learned Judicial Member was upheld by the Hon'ble Vice President sitting as the Third Member wherein it was held that:- "the provisions of Section 40(a)(ia) are applicable only to the amounts of expenditure which are payable as on the dated 31st March of every year and it cannot be invoked to disallow which had been actually paid during the previous year, without deduction of TDS". Considering all these facts and the discussions mentioned herein above, we are of the considered view that the Ld.CIT has erred in setting aside the order of the Ld. Assessing Officer by invoking Section 263 of the Act and directing the Ld.Assessing Officer to re-do the assessment of the assessee for the Assessment year 2009-10. Therefore, we hereby quash the order passed by the Ld.CIT U/s.263 of the Act.

9. The learned counsel for the appellant-Income Tax Department would submit that as per Section 194-C of the Income Tax Act, 1961, it is clear that the assessee making payment is required to deduct tax and therefore the impugned order of the Appellate Tribunal dated 02.01.2015 allowing the appeal of the respondent-assessee was incorrect and was therefore liable to be reversed and therefore this appeal deserves to be allowed.

10. That apart, it is submitted that the Income Tax Appellate Tribunal has

only placed reliance on the decision of the Tribunal ***Merilyn Shipping and Transports vs. Additional CIT,*** 16 ITR (Trib) 1 wherein it has been observed that the provision of Section 40(a)(ia) was applicable only to the amounts of expenditure which are payable as on the dated 31st March of every year and it cannot be invoked to disallow which had been actually paid during the previous year, without deduction of TDS.

11. Learned counsel for the appellant-Income Tax Department submits the aforesaid decision is not relevant to the facts of the case as admittedly no tax was deducted.

12. Opposing the prayer, the learned counsel for the respondent-assessee would submit that at best order dated 29.12.2011 passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 for the assessment year 2009-2010 is erroneous. However, it cannot be said it was prejudicial to the interest of the revenue.

13. The learned counsel for the respondent-assessee has drawn attention to the submission made by the Executive Director of the respondent-assessee who appeared in person before the Commissioner on 02.01.2014, 22.01.2014

and on 17.01.2014 .

14. In this connection, a reference was made to paragraph 6 of the Order dated 18.02.2014 of the Commissioner passed under Section 263 of the Act, 1961 wherein, it was observed as under:-

> "6. In response to this notice, Shri N. Mani, Executive Director of the Company appeared in person on 02-01-2014, 22-01-2014 and 17-02-2014. The Executive Director has filed letters from M/s Shriram Chits Karnataka Pvt Limited, M/s Shriram Chits Tamil Nadu Pvt Ltd and M/s Shriram Chits Pvt Ltd, Hyderabad confirming that the amounts received from M/s Shriram Capital Ltd of Rs.5 Crore, Rs.20 Crore and Rs.8 Crore respectively were admitted as Income for the AY 2009-10. The Executive Director has argued that the assessee company as far as the other three companies as mentioned above, have claimed the expenditure and admitted the same in the same assessment year. Hence, he submitted that there is neither postponement of receipt nor preponement of expenditure in the relevant transaction".

15. That apart, it is submitted that law is well settled. As tax was paid, the respondent-assessee cannot be held to be in any default and therefore, the impugned order of the Appellate Tribunal dated 02.01.2015 in ITA.No.724/Mds/2014 does not warrant any interference in this appeal.

16. In this connection, the learned counsel for the respondent-assessee has drawn attention to the decision of the Division Bench of the Delhi High Court in ***Commissioner of Income Tax-1 vs. Ansal Land Mark Township (P.) Ltd.***

17. It is submitted that proviso to Section 40(a)(ia) of the Income Tax Act, 1961 was inserted with effect from 01.04.2013. However, it has been interpreted to be declaratory and clarificatory in nature and therefore retrospective as held by the Hon'ble Division Bench of the Delhi High Court in the above said case and in ***Principal Commissioner of Income Tax -7 vs. M/s.Shivaai Industries Pvt.Ltd.,*** in ITA.No.599/2023 vide order dated 02.11.2023.

18. That apart, the learned counsel for the respondent-assessee has also drawn attention to the Show Cause Notice dated 18.12.2015 issued by the Assistant Commissioner of Income Tax, TDS Circle-3, Chennai under Section 201(1) & 201(1A) of the Income Tax Act, 1961, wherein the respondent-assessee was called upon to show cause as to why an order under Section 201(1) and 201(1A) of the Income Tax Act should not be made. Relevant portion of the Show Cause Notice dated 18.12.2015 issued by the Assistant

Commissioner of Income Tax, TDS Circle-3, Chennai under Section 201(1) & 201(1A) of the Income Tax Act, 1961, reads as under:-

> " The nature of transaction entered into with the above Chit Fund Companies are nothing but contractual in nature. The contractual transaction is bound by the provisions of Section 1940. The company should have deducted TDS on the contractual amount paid as per the provision of Section 194C of the IT Act, 1961.
>
> In the light of the above, you are hereby requested to appear before me at 11.30 a.m. on 30.12.2015 and show cause why an order under Section 201(1) and 201(1A) of the Income Tax Act should not be made. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative, you may show cause in writing on or before the said date which will be considered before any such order is made under Section U/s.201(1) and 201(1A).

19. We have considered the rival submission of the learned counsel for the appellant-Income Tax Department and the respondent-assessee.

20. Order dated 15.06.2016 was passed by the Assistant Commissioner of Income Tax (TDS) Circle-3 pursuant to the said Show Cause Notice dated 18.12.2015 under Section 201(1) and 201(1A) of the Income Tax Act, 1961 vide. The said order dated 15.06.2016 passed by the Assistant Commissioner of Income Tax (TDS) Circle-3 was reversed by the Appellate Commissioner in ITA.No.278/2016-2017 for the Assessment year 2010-2011 vide order dated

16.03.2020. The Appellate Commissioner vide order dated 16.03.2020 has held as under:-

> 6. In the instant case, the issue involved is the same. Shriram Capital Ltd. (SCL) is the Holding Company for Shriram Life Insurance Company (SLIC) and Shriram General Insurance Company (SGIC). The Shriram group has other concerns engaged in chitfund business, namely, M/s Shriram Chits Tamilnadu Ltd., M/s Shriram Chits Pvt. Ltd. And M/s Shriam Chits Karnataka Pvt. Ltd. These 3 concerns were stated to be having vast network of branches and information which could be tapped for the Insurance business. It was pleaded that an amount of Rs.25 crores was agreed to be paid to these 3 concerns by SCL, for providing uninterrupted access to the entire branch network by these 3 associate companies. The AO observed that the consideration paid was in pursuance of an agreement and that these companies were under the obligation to keep the branch network ready for use by the assesse or its representative. Accordingly, he opined that the transaction attracted provisions of Sec.194C. However, the same issue was decided against the revenue in the case of **M/s Armour Consultants Pvt. Ltd by CIT(A)**-17 for AY 2005-06 and 2006-07 and the decision of the CIT(A) was thereafter upheld by the Hon'ble ITAT vide its order dated 08.09.2011. **Respectfully following these orders, it is held that the provisions of Sec. 194C are not applicable to the payments made by SCL to the 3 chitfund companies. Since, the provisions of Sec. 194C are not attracted, the order passed by the AO u/s 201(1A) of the Act determining the interest chargeable on the defaulted amounts stands deleted. Ground Nos. 3 to 5 are allowed.**"

21. The above said order of the Commissioner of Income Tax (Appeals) has not been reversed. Similarly, decisions of the Appellate Tribunal in **M/s.Armour Consultants Private Limited Vs. Commissioner of Income Tax (Appeals)** for the Assessment Year 2005-2006 and for the Assessment Year 2006-2007 have not been reversed. Similarly, the order of Appellate Tribunal in **Merilyn Shipping and Transpots Vs. Additional CIT,** 16 ITR (Trib) has also not been appealed before the Court.

22. At best, the Assessment Order dated 29.12.2011 of the Assessing Officer was erroneous. However, it was not prejudicial to the interest of reverse so as to warrant a revision under Section 263 of the Income Tax Act, 1981. Therefore, there is no merits to challenge the Impugned Order of the Appellate Tribunal.

23. In view of the above submission, the substantial questions of law is answered in favour of the respondent-assessee and against the Revenue. Therefore, this Tax Case Appeal is liable to be dismissed. It is accordingly dismissed. No costs.

(R.S.K., J.) **(C.S.N., J.)**

27.08.2024

Neutral Citation : Yes / No
kkd / arb

To

The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

kkd / arb

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