IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No. 1801 of 2008

Shri V.Ramakrishnan ... Appellant / Appellant

Vs.

The Deputy Commissioner of Income Tax
Central Circle III(4)
Chennai. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 13.06.2008 made in ITA No.424/Mds/2004.

For Appellant : Mr. S.Sridhar

For Respondent : Mr. M.Swaminathan
Senior standing Counsel
for M/s. Premalatha

J U D G M E N T

(Delivered by **DR.VINEET KOTHARI, J.**)

The Assessee has filed this Appeal under Section 260-A of the Act raising the following purported substantial questions of law arising from the order of the learned Income Tax Appellate Tribunal dated 13.06.2008 whereby the learned Tribunal rejected the appeal of the Assessee for the Assessment Year 1999-2000 and held that the managerial remuneration for a sum of Rs.9 lakhs is taxable in the hands of the Assessee in the present Assessment Year. The findings of the learned Tribunal in this regard are quoted below for ready reference:-

> *"7. We have gone through the orders of the authorities below, the case laws cited and considered the arguments and find that the assessee has admitted to have maintained his accounts on mercantile basis. It is also a fact that the Company has made provision for payment of managerial salary of Rs.9 lakhs during the year under consideration in its books of accounts. Thus it is clear that the income has accrued to the assessee during the financial year ending on 31.3.1999 even though the income is not paid to the assessee as salary, the fact of*

accrual of income is not changed. Since the subsequent event can not reverse the process of accrual of income during the period prior to the date of such Resolution, which is always prospective and not retrospective, as held in the case of E.M.Raghunathan vs. CIT cited supra, therefore in our considered view, the assessing officer is legally correct in assessing Rs.9 lakhs as managerial remuneration from M/s. PPL as income of the assessee for the year under consideration and the learned Commissioner of Income-tax (Appeals) is also justified in confirming the action of the assessing officer being supported by the decision of the jurisdictional High Court. As such we decline to interfere in the order passed by the learned Commissioner of Income-tax (Appeals) which is confirmed and the appeal of the assessee is dismissed.

As a result, the appeal of the assessee is dismissed."

2. The questions of law on which the present Appeal was admitted by the Co-ordinate Bench of this Court on 05.02.2009 are also quoted below for ready reference:-

> *"(1). Whether the Appellate Tribunal is correct in law in sustaining the assessment of 'managerial remuneration' under the head 'salary' within the scope of sections 15 and 17 of the Act based on the provision for the said remuneration charged to in the accounts prepared in the hands of the company, M/s. Pentafour Products Limited?;*
>
> *(2) Whether the Tribunal is correct in law in sustaining the action of the Lower authorities in taxing the 'managerial remuneration' on 'accrual basis' even though he facts placed on record including the subsequent events would nullify the theory of accrual for the purpose of taxation in the hands of the appellant?"*

3. The learned counsel for the Appellant/Assessee Mr.S.Sridhar submitted before us that the Assessee was not maintaining his books of accounts on mercantile basis as noted by the learned Tribunal in the aforesaid paragraph No. 7 quoted above and since the Managerial remuneration in question was not received by the Assessee during the Assessment Year 1999-2000 in question and he was not liable to be taxed in respect of the said remuneration in his hands for the said Assessment year. He also submitted that the Company of which the petitioner/Managing Director, namely, M/s. Pentafour Products Limited was in financial difficulty and withdrew the managerial remuneration also by way of a Resolution. Therefore, the Assessee could not have been taxed with regard to the same.

4. On the other hand, the learned counsel for the Revenue supported the impugned order of the learned Tribunal and submitted that no such Resolution of the Company for withdrawal of the managerial remuneration was filed by the Assessee and it was a mere contention raised before the learned CIT (Appeals) as also before the learned Tribunal. He further submitted that the finding of fact of the learned Tribunal that the Assesse has admitted to have maintained his accounts on mercantile basis is a finding on fact, which is binding on this Court under Section 260-A of the Act. He further submitted that the definition of term 'salary' under Section 15 of the Act clearly includes the salary due from an employer or a former employer whether paid or not and therefore, the learned Tribunal was justified in holding the said managerial remuneration is to be taxed as 'salary' in the hands of the present Assessee.

5. Having heard the learned counsels for the parties, we are of the clear opinion that there are no merits in the present Appeal filed by the Assessee.

6. Firstly, it is a matter of record and a finding on fact by the Tribunal that the Assessee has admitted to have maintained his accounts on mercantile basis and therefore any negation on this aspect could be verified only by the learned Tribunal. The finding on fact as recorded by the Tribunal, is binding on this Court.

7. Secondly, it appears that no such evidence or withdrawal of the managerial remuneration, which was debited by way of provisions in the books of accounts maintained by the Company appears to have been placed before the authorities below. Had it been so, the learned Tribunal as well as CIT (Appeals) were bound to take note of the same and the effect thereof on the taxability of the said managerial remuneration in the hands of the present Assessee, could have been discussed by them.

8. Going by the facts that the Company for which the Assessee was the Managing Director during the period had made a provision for managerial remuneration of Rs.9 lakhs to be paid to the Assessee creates an obligation on the present Assessee to bear the tax liability in respect of the same, in view of the definition of the word 'salary' under Section 15 of the Act which includes both 'salary' actually received or accrued to the person concerned.

9. In view of the above, we are of the clear opinion that the order of the learned Tribunal does not suffer from any legal infirmity and the Appeal of the Assessee deserves to be dismissed and the same is accordingly dismissed. The questions of law framed above are answered against the Assessee and in favour of the Revenue. No costs.

(V.K., J.) (C.V.K.,J.)
20.03.2019

Index : Yes/No
Internet : Yes/No
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Dr.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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