

In the High Court of Judicature at Madras

Dated : 24.3.2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice N.KIRUBAKARAN

Writ Appeal No.276 of 2016 and CMP.No.4512 of 2016

Megatrends Inc. rep.by its
Partner Mrs.Mita Kalpesh Patel

...Appellant

Vs

1.The Commissioner of Income Tax
Appeals-4, Chennai-34.

2.The Assistant Commissioner of
Income Tax, Non Corporate Circle-3,
Chennai-34.

...Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated
11.2.2016 made in W.P.No.37072 of 2015.

For Appellant : Ms.T.C.A.Sangeetha
For Respondents : Mr.Pramod Kumar Chopda

Judgment was delivered by V.RAMASUBRAMANIAN,J

This writ appeal arises out of an order passed by the learned Judge
dismissing a writ petition filed by the assessee.

2. Heard Ms.T.C.A.Sangeetha, learned counsel for the appellant and Mr.T.Pramod Kumar Chopda, learned Standing Counsel for the Department.

3. The appellant has so far been assessed in the status of a partnership firm. For the assessment year 2012-13, they filed a return of income. It was processed under Section 143(1), selected for scrutiny, details were called for and an order passed under Section 143(3) on 30.3.2015.

4. Aggrieved by the order of assessment, the appellant filed a first appeal before the Commissioner of Income Tax (Appeals). During the pendency of the appeal, the Appellate Commissioner issued a show cause notice dated 6.11.2015, questioning the very status of the appellant as a partnership firm and calling upon the appellant to show cause as to why their status should not be changed to that of 'association of persons'.

5. Challenging the said show cause notice, the appellant filed a writ petition. But, the learned Judge dismissed the writ petition on the ground that the appellant can as well submit their explanation and contest the show cause notice on merits rather than questioning the same in a proceeding under Article 226. Aggrieved by the dismissal of the writ petition, the assessee is before us.

6. The fact that the appellant has been assessed in the status of a

partnership firm so far is not in dispute. The fact that even the order of assessment passed under Section 143(3) by the Assessing Officer, treated the assessee as a partnership firm is also not in dispute.

7. But, in the appeal filed by the assessee before the Commissioner of Income Tax (Appeals), the Appellate Authority thought that a firm cannot be a partner in another firm and that only natural legal persons can be partners in a partnership firm. This fundamental error, committed by the Commissioner of Income Tax (Appeals) has led to the disallowance of an expenditure claimed towards remuneration and interest paid to partners.

8. There is no law, which says that a firm cannot be a partner in another firm.

9. But, in a valiant attempt to sustain the show cause notice, it was contended by Mr.T.Pramod Kumar Chopda, learned Standing Counsel for the Department that the total number of partners, who constituted the appellant, exceeded 20 and that it was the reason for the Commissioner of Income Tax (Appeals) issuing a show cause notice.

10. We do not find anything in the impugned show cause notice to come to such a conclusion. Therefore, we would not allow the Standing

Counsel to develop the show cause notice and improve upon it.

11. The learned counsel for the appellant contended on the basis of a judgment of the Jharkhad High Court in ***M/s.Central Coalfields Ltd. Vs CIT [W.P.(T).No.1293 of 2013 dated 10.12.2013]*** that the Appellate Commissioner does not even have the power to alter the status of an assessee in the course of the appellate proceedings.

12. But, a careful look at the decision of the Jharkhad High Court would show that the Jharkhand High Court found fault with the Appellate Commissioner on two grounds namely (i) that he had pre-concluded the issue in the show cause notice itself and (ii) that in an appeal arising out one assessment order, he had sought to change the status of the assessee in respect of many assessment orders of the past.

13. In response to the above contention, Mr.T.Pramod Kumar Chopda, learned Standing Counsel for the Department drew our attention to Explanation under Section 251, which reads as follows :

"In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings, in which, the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the

appellant."

14. But, we do not think that we should actually go into the question of jurisdiction of the Appellate Commissioner at this stage. When we find that the show cause notice issued by the Appellate Commissioner was obviously wrong, it was liable to be set aside.

15. Therefore, without expressing any opinion on the power of the Appellate Commissioner, we allow the writ appeal and set aside the order of the learned Judge. The writ petition is allowed and the impugned order in the writ petition is set aside on the sole ground that the finding that a firm cannot be a partner in a partnership firm, is contrary to law. No costs. Consequently, the above CMP is closed.

24.3.2016

Internet : Yes

To

- 1.The Commissioner of Income Tax Appeals-4, Chennai-34.
- 2.The Assistant Commissioner of Income Tax, Non Corporate Circle-3, Chennai-34.

RS

V.RAMASUBRAMANIAN,J
AND
N.KIRUBAKARAN,J

RS

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