

(5213)

In the High Court of Judicature at Madras

Dated : 31.10.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN

and

The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1387 of 2007

Commissioner of Income Tax

Tamil Nadu-I, Madras

Vs

.. Appellant

M/s.Cholomandalam Investemnt and Finance

Co.Ltd., "Dare House", No.2, NSC Bose Road

Chennai 600 001.

.. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 23.11.2006 made in I.T.A.No.1227/Mds/2005 for the assessment year 1996-97.

For Appellant : Mr.J.Nareshkumar

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 23.11.2006 made in I.T.A.No.1227/Mds/2005 for the assessment year 1996-97.

2. The assessee is a company engaged in the business of leasing and finance. For the assessment year 1996-97, the assessing officer, while making the original assessment has

called for the basic details regarding two purchasers. After receipt and taking into consideration of the details furnished by the assessee, the assessing officer came to the conclusion that the purchase of two items and leasing them to related parties do not fall under the category of sale and lease back transaction and therefore the assessing officer has not made any further investigation. The assessing officer disallowed the depreciation in respect of machineries got back under lease from two parties and added back to the total income. Against that order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) allowed the assessee's appeal stating that there was no fault of the assessee in disclosing the material facts and it was a case for change of opinion. Against that order, the Department preferred an appeal before the Income-tax Appellate Tribunal and the Income-tax Appellate Tribunal following the decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. ANNAMALAI FINANCE LIMITED reported in 275 ITR 451 dismissed the appeal filed by the Department. Being aggrieved by that order, the Department is in appeal before us by formulating the following question of law:

"Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal is right in law in holding that the assessment has been reopened after 4 years from the end of the relevant assessment year, even though the assessee not disclosed fully and truly the material facts for completing the assessment ;is valid in law?"

3. Learned counsel appearing for the revenue relied on explanation (2) appended to Section 147 of the Income-tax Act and contended that the case of the assessee would come within the purview of sub-clause (iv) of clause (c) of Explanation (2) to the effect that the assessee has claimed excessive loss or depreciation allowance and in that circumstance, Section 147 would apply.

4. We heard the argument of the learned counsel for the revenue and perused the materials on record.

5. In the original assessment order passed by the assessing officer, it was held that the assessee was asked vide questionnaire dated 31.8.1998 to give invoices for assets on which depreciation was claimed during the year (100% rate and 40% rate) along with list of lease transactions. The assessee submitted that information on 4.12.1998. In order to verify the genuineness of these transactions, a notice under Section 133(6) calling for certain information was issued to all the lessees and suppliers involved in the lease transactions. Further, the assessee was asked to clarify vide letter dated 18.12.1998 whether they had entered into any sale and lease back transactions during the relevant assessment year. As far as the regular transactions are concerned, they were thoroughly scrutinised. The invoices and lease agreements furnished by the assessee were compared with invoices, delivery notes/challans, lease agreement and other details submitted by the lessees/suppliers in response to notice under Section 133(6) and found that there was no discrepancy in it. From that, it was clear that while making the original assessment the assessing officer had called for the basic details regarding those purchases, and the assessee had furnished those details. On that basis, the assessment has been completed. This factum has been taken into consideration by the Commissioner of Income-tax (Appeals), who held that perhaps the assessing officer came to

the conclusion that the purchase of these two items and leasing them to related parties do not fall under the category of "Sale and Lease Back Transaction" and therefore the assessing officer has not made further investigation. But the fact was that the assessing officer has spotted those two transactions and called for certain details and the assessee has furnished the same. In those circumstances, it could not be regarded that the assessee had failed to disclose fully and truly all material facts relevant for assessment. As the facts revealed that the assessing officer who made the original assessment order has called for all the details regarding the case where 100% depreciation were claimed and the assessee had furnished the invoices for purchase of assets on which 100 % depreciation were claimed, there was no failure on the part of the assessee and if at all there was any failure, according to the Commissioner of Income-tax (Appeals), it was on the part of the assessing officer, who made the original assessment without going behind the nature of the transactions accepting the details furnished by the assessee. The Tribunal also extracted that portion of the order and found on fact that there was no fault on the part of the assessee so as to enable the Department to reopen the assessment as the proviso to Section 147 of the Income-tax Act would squarely apply to the case of the assessee. We find no infirmity in the order passed by the Tribunal. Hence, the appeal is dismissed.

(K.R.P.,J.) (C.V.,J.)  
31.10.2007

Index:Yes

Internet: Yes

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To

1. The Assistant Registrar,  
Income Tax Appellate Tribunal,  
Chennai-600 034
2. The Commissioner of  
Income-tax (Appeals)- I  
Chennai
3. The Asst. Commissioner  
of Income Tax, Central Circle I(4)  
Chennai.

CHITRA VENKATARAMAN,J

K.RAVIRAJA PANDIAN,J  
AND

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Tax Case (Appeal) No.1387 of  
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