

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.07.2015

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI**

T.C.A. NO. 327 OF 2015

Commissioner of Income Tax
Salem.

.. Appellant

- Vs -

Tamil Nadu State Transport
Corporation (Salem) Ltd.
12, Ramakrishna Road
Salem 636 007.

.. Respondent

Appeal filed under Section 260-A of the Income Tax Act against the order dated 22.08.2014 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, made in ITA No.1464/Mds/2014.

For Appellant : Mr. J.Narayanaswamy

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee, the appellant/Revenue is before this Court by filing the present appeal raising the following questions of law :-

"i) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the pension fund trust to which the assessee had contributed funds need not be

approved by the Jurisdictional Commissioner or Chief Commissioner?

ii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the income would crystallize on approval of assessee's claim for reimbursement by competent authority while dealing with the issue of reimbursement of the amount relating to the issue of free passes for traveling of freedom fighters, etc., by the assessee?"

2. The facts, in a nutshell, are as hereunder :-

While completing the assessment under Section 143 (3), it was found that the assessment is erroneous and prejudicial to the Revenue and, therefore, the Commissioner of Income Tax initiated revision proceedings under Section 263 of the Income Tax Act. The CIT found that the assessee has not made application for recognition of the Pension Fund Trust to the Commissioner/Chief Commissioner, Salem, as per Part A of Schedule IV of the Act and, therefore, the payments made to the pension fund trust has to be disallowed. It was also found that the assessee had shown subsidy towards free passes issued during the financial year as receivable from Government on account of reimbursement. Though the assessee is following mercantile system of accounting, it had not credited the subsidy in the profit and loss account and had not shown the same as income. Accordingly, the assessment order was set aside and the matter was remitted to the assessing officer for assessment once over.

3. Aggrieved by the said order, the assessee preferred appeal to the Tribunal. The Tribunal held that Section 36 (1) (iv) of the Act dealing with contribution to a recognised pension fund does not lay down any condition that the said pension fund should be approved by the jurisdictional Commissioner. Further, on the issue of reimbursement/subsidy by the Government towards free passes and treatment of the same as income, the Tribunal remitted the case to the assessing officer holding that the claim of the assessee is subject to scrutiny by the Social Welfare Department and the income crystallizes only after the claim of the assessee is approved by the competent authority and, therefore, the Assessing Officer was directed to look into the said issue and, thereafter, pass necessary orders. Accordingly, the Tribunal allowed the appeal in part in favour of the assessee. Aggrieved by the said order, the appellant/Revenue is before this Court by filing the present appeal.

4. Learned standing counsel for the Revenue submitted that the assessee has not made any application for recognition of the Pension Fund Trust to the jurisdictional Commissioner, viz., Commissioner/Chief Commissioner of Income Tax, Salem, in terms of Part A of Schedule IV of the Act r/w Section 2 (38), which clearly defines recognised provident fund as one recognised by the jurisdictional Commissioner. It is further submitted that the Tribunal committed in error in remitting the matter back on the

issue relating to reimbursement of the amount towards free passes, holding that the income would crystallize only on approval of assessee's claim for reimbursement by the competent authority, when the assessee is following a mercantile system of accounting and the income receivable by the assessee from the Government is to be treated as income of the present financial year. Therefore, it is prayed that the order of the Tribunal deserves to be interfered with.

5. Heard the learned counsel appearing for the Revenue and perused the materials available on record.

6. On a careful perusal of the order of the Tribunal, more particularly, para-8 of the order, we find no justification to differ with the findings of the Tribunal since the Tribunal has only stated that the original authority shall re-look into the issue on fact and, thereafter, decide the issue when the income crystallizes. For better clarity, the relevant portion of the order is extracted hereinbelow :-

"8. The second issue on which the assessee has assailed the order of CIT (Appeals) is with regard to reimbursement of free passes. The assessee is crediting the amounts received from the Government on account of issuance of passes in the year of receipt. The objection raised by the Revenue is that, since the assessee is following mercantile system of accounting, the assessee should offer to tax, reimbursement amount in the year of claim itself. A perusal of the records does not make it

clear whether the assessee is issuing free passes as per the scheme of Department of Social Welfare, Government of Tamil Nadu or Welfare Scheme formulated by its own and is thereafter claiming reimbursement from the Social Welfare Department. The moot point which has to be looked into for including the income in tax net is, 'When does the income crystallises'? In case the assessee is issuing free passes to physically handicapped, freedom fighters, etc., under the scheme of Government, the assessee is assured to get the reimbursement of the amount on the issuance of passes itself. In case the claim of the assessee is subject to scrutiny by Social Welfare Department, the income crystallises after the claim of the assessee is approved by the competent authority. The Assessing Officer is directed to look into this issue and thereafter, pass necessary orders in accordance with law."

7. In the light of the above order, this Court is of the considered opinion that the second question of law raised by the appellant is not a question of law and requires no adjudication. Accordingly, the same is rejected.

8. Insofar as the first question relating to recognition of pension fund trust to be recognised by the jurisdictional Commissioner is concerned, the Tribunal has dealt with the said issue in para-6 of its order. The Tribunal has interpreted Section 36 (1) (iv) of the Act to say that the recognition of the pension fund trust by the jurisdictional Commissioner is not necessary. For better clarity the said Section 36 (1) (iv) is extracted hereinbelow :-

"Other deductions.

36. (1) *The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*

* * * * *

(iv) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be; and subject to such conditions as the Board may think fit to specify in cases where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the number of members of the fund;

* * * * *

8. It is not in dispute that the Pension Fund Scheme has been jointly floated by the State Transport Corporations, as has been recorded by the Tribunal. The Tribunal has recorded a finding that State Transport Corporations operating in different districts in the State are signatories to the Trust Deed for setting up the Pension Fund Scheme. It is also not in dispute that the said fund has been recognized by the CIT-VII, Chennai. In the above backdrop, a cursory reading of Section 36 (1) (iv) of the Act would reveal that nowhere in the said provision it is stated that the pension fund should be recognised by the jurisdictional Commissioner. There is no

manner or intentment in the said provision which justifies the stand of the Department that the pension fund should be recognised only by the jurisdictional Commissioner and that the approval of the jurisdictional Commissioner is mandatory. In the above scenario, the Department cannot disallow the assessee of the contributions made to the pension fund on the ground that the pension fund has not been recognised by the jurisdictional Commissioner.

9. The Department has raised a further plea that Section 2 (38) of the Act defines recognised provident fund as one recognised by the jurisdictional Commissioner/Chief Commissioner. For better appreciation of the matter, it is useful to extract Section 2 (38) on which much stress is laid by the learned counsel for the Revenue :-

"Definitions.

2. In this Act, unless the context otherwise requires,—

* * * * *

(38) "recognised provident fund" means a provident fund which has been and continues to be recognised by the [Chief Commissioner or Commissioner] in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952)."

9. At the risk of repetition, it is to be stated that the Tribunal has recorded a finding that State Transport Corporations operating in different

districts in the State are signatories to the Trust Deed for setting up the Pension Fund Scheme and that the said fund has been recognized by the CIT-VII, Chennai. A bare reading of the above provision clearly and unambiguously states that recognised provident fund means a provident fund which has been and continues to be recognised by the Chief Commissioner or Commissioner and nowhere it states that it should be recognised by the jurisdictional Commissioner. Therefore, it is not open to the Department to take a plea that the provident fund trust should be recognised by the Commissioner/Chief Commissioner of Income Tax, Salem, which is not the purport of the provision. Accordingly, this contention of the Revenue is also negated.

10. In the above circumstances, no question of law, much less substantial questions of law arise for consideration in this appeal. Accordingly, this appeal, filed by the Revenue/appellant, fails and the same is dismissed confirming the order passed by the Tribunal.

(R.S.J.) (K.B.K.V.J.)

20.07.2015

Index : Yes/No

Internet : Yes/No

GLN

To

1. Commissioner of Income Tax
Salem.
2. The Income Tax Appellate Tribunal
Madras 'A' Bench
Chennai.

10

R.SUDHAKAR, J.
AND
K.B.K.VASUKI, J.

GLN

T.C.A. NO. 327 OF 2007

20.07.2015