IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2007

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The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.637 and 638 of 2007

Commissioner of Income-Tax-I
Chennai. ... Appellant /Appellant

Vs.

M/s.Ganesan Builders Ltd.
72-A, C.P.Ramaswamy Road,
Mylapore, Chennai. ... Respondent/Respondent

The above T.C.(Appeals) are preferred under Section 260A of the Income-Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 14.7.2006 made in ITA Nos.1035 and 1036/Mds/2003 for the assessment year 1997-98 and 1998-99, against the order of the Commissioner of Income Tax (Appeals II) made in ITA 279/2002-03/AIII and ITA 280/2002-2003 A III dated 3.2.2003 against the order of Deputy Commissioner of Income Tax, Company Circle II (2) Chennai 34 made in PANGIR.No.GX018 97-98 and 98-99 dated 30.9.02.

For Appellant : Mr.J.Narayanasamy

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the orders of the Income-tax Appellate Tribunal made in ITA Nos.1035 and 1036/Mds/2003, dated 14.7.2006.

2.1. The Revenue is the appellant. The assessment years involved are 1997-98 and 1998-99. The assessee acquired shares from M/s.Amaravathy Chemicals and claimed the dimunition in the value of shares as revenue loss. The Assessing Officer found that the assessee acquired the shares for the purpose of investment and

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not for the purpose of stock-in-trade and hence, the dimunition in the value of shares will only be capital in nature. Accordingly, the Assessing Officer holding that the assessee had wrongly claimed a notional capital loss as revenue loss and thereby reduced its tax liability, imposed penalty under Section 271(1)(c) of the Income-tax Act, 1961 for both the assessment years.

2.2. Aggrieved, the assessee preferred appeals before the Commissioner of Income-tax (Appeals), who, by orders dated 3.2.2003, deleted the penalty holding that the assessee had dutifully disclosed the material facts and particulars of income in the audit statements filed before the Assessing Officer and has not concealed any income nor furnished inaccurate particulars of income. Against the said order of the Commissioner, the Revenue filed appeals before the Income-tax Appellate Tribunal, which, by its common order dated 14.7.2006, upheld the order of the Commissioner of Income-tax (Appeals).

2.3. Aggrieved by the same, the Revenue has preferred the above appeals raising the following substantial questions of law :

> "(i) Whether in the facts and circumstances of the case, the Tribunal had properly exercised its discretion and was right in deleting the penalty imposed u/s 271(1)(c) ?
> (ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessing officer has to prove with evidence that there was a deliberate attempt to conceal income before he could invoke the provisions of sec.271(1)(c), ignoring the Explanation I to sec.271 ?"

3. Heard Mr.J.Narayanasamy, the learned standing counsel appearing on behalf of the Revenue.

4. It is not in dispute that the assessee acquired shares and that there was a dimunition in the value of shares acquired by the assessee. It is also not disputed that the assessee has debited the equal amount of dimunition in the value of shares in the Profit and Loss A/c. The assessee claimed the dimunition in the value of shares as revenue loss. It is seen from the order of the Commissioner of Income-tax (Appeals) that the issue whether it is a business loss or not has already been decided against the assessee in a separate appeal. But, it is the concurrent finding of both the authorities below that since the issue whether it is a business loss or not has been decided against the assessee, it cannot be concluded that the assessee had filed inaccurate particulars of income, because the assessee had dutifully disclosed the same in the audit statements filed before the Assessing Officer. Accordingly, both the authorities below held that the case does not fall under furnishing of inaccurate particulars of income, as the

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assessee had disclosed the writing off of the investments in the audit statements for both the assessment years and hence, levy of penalty under Section 271(1)(c) is not warranted.

5. This Court, in Commissioner of Income-tax v. P.Natarajan [(2004) 266 I.T.R. 219], while observing that the power to levy penalty under Section 271(1)(c) of the Act is discretionary and that discretion vested in the Assessing Officer is subject to appeal and the appellate authorities is entitled to look into all the facts of a given case and decide as to whether the penalty was to be sustained or set aside, found that both the authorities below had examined all the facts and accepted the claim of the assessee therein that his failure to file the return earlier was bona fide and hence, penalty was not on the facts of that case leviable and thus, upheld the orders of the authorities below holding that there was no error in the application of law to the facts of the case.

6. Similarly, in the instant case, it is the concurrent finding of the lower authorities that the assessee has not concealed any particulars of income nor furnished inaccurate particulars of income, as the assessee had disclosed the facts in the audit statements furnished before the Assessing Officer. Hence, following the earlier decision of this Court in Commissioner of Income-tax v. P.Natarajan [(2004) 266 I.T.R. 219], cited supra as well as in view of the recent decision of the Apex Court in Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), whereunder it is held that whenever there is a concurrent factual finding by the authorities below, the same should be accepted and no interference should be called for by the High Court, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

In view of the above, finding no substantial questions of law arise for our consideration, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 is also dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "A", Chennai.

2.The Commissioner of Income Tax
(Appeals), Chennai.

3.The Deputy Commissioner of
Income-tax, Company Circle-II(2),
Chennai.

4. The Commissioner of Income Tax I,
Chennai.

+ 1 cc to Mrs. Pushyasitaraman, Advocate SR No. 34822

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of 2007

MJ(CO)
SR/3.7.2007

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