

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.321/Mds/2016

निर्धारण वर्ष / Assessment Year : 1973-74

M/s Southern Roadways Limited,
'Lakshmi Buildings' Kochadai,
Madurai – 625 016.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle -2,
Madurai.

PAN : AACCS 1478 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Srinivasan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 01.11.2016

घोषणा की तारीख/Date of Pronouncement : 27.12.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -1, Madurai, dated 16.12.2015 and pertains to assessment year 1973-74.

2. Shri R. Srinivasan, the Ld.counsel for the assessee, submitted that the assessment was completed by an order under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act') on 21.08.1973 for the assessment year 1972-73. The issue for the assessment year 1972-73 was with regard to compensation received by the assessee for acquisition of passenger bus service run by the assessee. The High Court found that the compensation received by the assessee is liable for taxation for the assessment year 1973-74 and not for the assessment year 1972-73. Accordingly, the Assessing Officer reopened the assessment for the assessment year under consideration. The Ld.counsel submitted that the reopening of assessment was barred by limitation. Even though this Tribunal and the High Court found that the compensation received for taking over of passenger bus service by the State Government is assessable for the assessment year 1973-74, the reopening of assessment by the Assessing Officer for the assessment year 1973-74 was beyond the period of limitation. Therefore, according to the Ld. counsel, the Assessing Officer is not justified in reopening the assessment.

3. The Ld.counsel for the assessee very fairly submitted that a writ petition was filed before the Madras High Court challenging the notice issued by the Assessing Officer for reopening the assessment for assessment year 1973-74. The Madras High Court while considering the writ petition, found that the notice issued by the Assessing Officer for reopening of assessment was within the period of limitation. According to the Ld. counsel, the High Court has not considered the case in a right perspective and a review petition was filed by the assessee before the High Court. The review petition is still pending for disposal by the High Court. Since the order passed by the Assessing Officer for assessment year 1973-74 attained finality, it cannot be reopened by the Assessing Officer for assessing the compensation received by the assessee for acquisition of passenger bus service by the State Government.

4. We have heard Shri B. Sahadevan, the Ld. Departmental Representative, also. The Ld. D.R. submitted that the issue of limitation was challenged by the assessee before the High Court by way of writ petition. The Madras High Court found that the reopening of assessment by issuing notice under Section 148 of the Act was valid. Accordingly, the Ld. single Judge of the Madras High

Court dismissed the writ petition filed by the assessee. The assessee raised the matter before the Division Bench of the Madras High Court. The Division Bench also affirmed the order of the Ld. single Judge. The SLP filed before the Apex Court by the assessee was also dismissed. Therefore, the issue of limitation attained its finality. Now the assessee claims before this Tribunal that the review petition was pending before the High Court. The assessee cannot now argue before this Tribunal that the Madras High Court has not considered the issue of limitation in a right perspective. The assessee has to argue the case either before the High Court or before the Supreme Court and this kind of argument cannot be permitted before the Tribunal. Therefore, the CIT(Appeals) has rightly rejected the claim of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The issue of limitation was raised by the assessee before the CIT(Appeals). The CIT(Appeals) found that the Madras High Court considered this issue and found that the order passed by the Assessing Officer was within the period of limitation. In fact, the order was passed under Section 154 of the Act giving effect to the direction of the Madras

High Court. The assessee has also challenged the order of the Ld. single Judge before the Division Bench and the Division Bench also considered the order of the Ld. single Judge and affirmed that the order passed for the assessment year 1973-74 was within the period of limitation. The SLP filed by the assessee was also rejected by the Apex Court. In those circumstances, this Tribunal is of the considered opinion that the issue of limitation cannot be re-agitated before this Tribunal once again. When the Madras High Court found that the order passed by the Assessing Officer was within the period of limitation, which was affirmed by the Division Bench and the SLP was also dismissed by the Apex Court, the assessee cannot be allowed to argue the case before this Tribunal once again. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 27th December, 2016 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 27th December, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Madurai
4. Principal CIT-1, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.