

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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 Nos.2663 & 2664/Mds/2016

&

C.O. Nos.163 & 164/Mds/2016

(in I.T.A. Nos.2663 & 2664/Mds/2016)

निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

The Income Tax Officer,
Non-Corporate Ward 1(3),
Chennai - 600 034.

v. M/s Murasoli Maran Family Trust,
No.4, II Avenue, Boat Club Road,
R.A. Puram, Chennai - 600 028.

PAN : AAATM 0863 H

(अपीलार्थी/Appellant)

(Respondent & Cross Objector)

अपीलार्थी की ओर से/Appellant by : Smt. Sumathy Venkatraman, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. N. Devanathan, Advocate

सुनवाई की तारीख/Date of Hearing : 22.12.2016

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश /O R D E R

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

The Revenue has filed the appeals against the common order passed by the Commissioner of Income Tax (Appeals)-2, Chennai, dated 30.06.2016. The assessee has also filed cross-objections supporting the order of the CIT(Appeals). Therefore, we

heard the appeals and the cross-objections together and disposing of the same by this common order.

2. Smt. Sumathy Venkatraman, the Ld. Departmental Representative, submitted that the assessee-trust extended the trust for a period of 20 years on the basis of the resolution passed in the Board meeting held on 05.06.2003. According to the Ld. D.R., there are three Trustees in the Trust. They are as follows:-

- (1) Shri Murasoli Maran
- (2) Smt. Mallika Maran
- (3) Shri Kalanithi Maran

Out of three Trustees, Shri Murasoli Maran was admitted in the hospital and other two Trustees participated in the Trust meeting which was held on 05.06.2003. The two Trustees extended the period of the Trust in the absence of Shri Murasoli Maran. According to the Ld. D.R., Shri Murasoli Maran had not nominated anybody to attend the meeting. Therefore, the extension of Trust for another period of 20 years was not justified. Hence, the assessee-trust was assessed under Section 167 of the Income-tax Act, 1961 (in short 'the Act') at maximum marginal rate. The CIT(Appeals), without appreciating the fact that the extension which was said to be approved in the resolution dated 05.06.2003, held

that the extension was not valid and allowed the appeal of the assessee.

3. The Ld. Departmental Representative further pointed out that the shares of the benefit was varied vis-à-vis the actual allocation in the original trust deed. According to the Ld. D.R., the accumulated income of the beneficiaries shall pass to the legal heirs on the death or marriage of the respective beneficiaries. According to the Ld. D.R., when the Trust deed names 10 beneficiaries, the allocation of benefits was made to 13 beneficiaries. Therefore, the Assessing Officer has rightly found that the trust was invalid, accordingly, the same was assessed as Association of Persons under Section 167 of the Act.

4. On the contrary, Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the reopening of assessment on the basis of material available on record during the course of regular assessment, cannot be a reason for reopening the assessment. The entire particulars gathered by the Assessing Officer is very much available at the time of regular assessment, therefore, the reopening of assessment itself is invalid.

5. Coming to the merit of the assessment at the maximum marginal rate, the Ld.counsel submitted that when the Assessing Officer came to a conclusion that the Trust ceased to exist and became invalid, the assessment cannot be made in the hands of the very same Trust. Moreover, when there are 3 Trustees, out of which 2 Trustees participated in the meeting and passed a resolution to extend the period of Trust, the resolution passed is legally sustainable. One of the Trustees could not attend the meeting since he was indisposed and admitted in the hospital at the relevant point of time. After the resolution dated 05.06.2003, the said Shri Murasoli Maran has not objected for extending of Trust at any point of time. According to the Ld. counsel, even after the death of Shri Murasoli Maran, the legal heirs of Shri Murasoli Maran did not object to the resolution passed on 05.06.2003, therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found that there are three Trustees in the assessee-trust, out of which one was indisposed and admitted in the hospital for treatment. The remaining two Trustees attended the meeting held

on 05.06.2003 and passed the resolution for extending the trust for another 20 years. This resolution was found to be not valid by the Assessing Officer since one of the Trustees, namely, Shri Murasoli Maran could not attend the meeting on 05.06.2003. It is not in dispute that Shri Murasoli Maran was admitted in the hospital and he was taking treatment. Totally there were three Trustees, out of which two trustees attended the meeting, therefore, the resolution was validly passed by the majority of Trustees. Even if Shri Murasoli Maran was present at the meeting held on 05.06.2003 and objected to passing of the resolution, this Tribunal is of the considered opinion that the decision taken by the majority of Trustees has to be taken as valid decision for extending the Trust for another 20 years. Therefore, absence of Shri Murasoli Maran in the meeting on 05.06.2003 would not be of any consequence at all. Moreover, at no point of time either said Shri Murasoli Maran or his legal heir objected to the resolution passed on 05.06.2003 extending the trust period for another 20 years. In those circumstances, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that the assessee-trust is eligible to claim benefit available under Section 161 of the Act. Therefore, the order of the Assessing Officer to assess the income at maximum

marginal rate under Section 167 of the Act is not justified. In view of the above discussion, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. Since the cross-objections filed by the assessee are in support of the order of the CIT(Appeals), the cross-objections have become infructuous.

8. In the result, both the appeals and the cross-objections stand dismissed.

Order pronounced on 31st January, 2017 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 31st January, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Chennai-34
4. Principal CIT-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.