M/S Ganapathy & Co.Bangalore vs Commr.Income Tax,Bangalore on 18 January, 2016

Equivalent citations: AIR 2016 SUPREME COURT 422, 2016 (11) SCC 274, 2016 (1) AKR 767, AIR 2016 SC (CIVIL) 1087, (2016) 1 MAD LJ 555, (2016) 1 SCALE 333, (2016) 161 ALLINDCAS 14 (SC), 2016 (116) ALR SOC 39 (SC), 2016 (2) KCCR SN 104 (SC)

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Bench: Prafulla C. Pant, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1964 OF 2008

M/S GANAPATHY & CO.,
BANGALORE ...APPELLANT

VERSUS

THE COMMISSIONER, INCOME TAX
BANGALORE ...RESPONDENT

J U D G M E N T

RANJAN GOGOI, J.

1. The High Court of Karnataka by the impugned order dated 3rd July, 2007 had answered the questions referred to it for its opinion under Section 256(2) of the Income Tax Act, 1961 (as it then existed) against the assessee and in favour of the revenue. Aggrieved, the assessee has filed this appeal upon grant of leave under Article 136 of the Constitution of India.

2. At the outset, the questions of law on which the High court had rendered its opinion may be set out as below.

"i.	Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the disallowance of service charges paid to M/s Universal

		Trading Company made under Section
		40A(2)?
ii.		Whether on the facts and in the
		circumstances of the case, the
		Tribunal was justified in holding that
		the loss shown by the assessee in the
		film business amounting to
		Rs.31,48,670/- was allowable?
iii.		Whether on the facts and in the
		circumstances of the case, the
		Tribunal was justified in allowing the
		assessee's claim for deduction under
		Section 35(2A) in respect of donation
		to Aparna Ashram?"

3. The necessary discussions can best be unfolded by taking up each of the claims of deduction made by the assessee which were decided against the assessee by the High Court by the order under challenge.

4. Disallowance of Service charges For the Assessment Year in question i.e. 1984-1985, the assessee claimed the benefit of disallowance of the service charges paid to one M/s Universal Trading Company ("UTC" for short). The Assessing Officer disallowed the said claim on the ground that in the proceedings arising out of the Assessment Order for the previous year i.e. 1983-1984 the said claim had been negatived by the C.I.T. in appeal. The Assessing Officer, in addition, also took note of the fact that the membership in the asseessee- firm and UTC is common and one K.L. Srihari had a sizeable holding in each of the two firms. The Assessing Officer also had regard to the fact, while disallowing the said claim, that the assessee had failed to provide proof of service rendered by UTC in the period covered by the Assessment Year in question. He also took note of the advice of a Chartered Accountant contained in a Note which was found in the course of a search proceeding. The said Note contained an advise to the assessee to include service charges to UTC as one of the methods to reduce the incidence of Income Tax. The aforesaid conclusions of the Assessing Officer were upheld in Appeal by the CIT. Aggrieved, the Revenue filed an appeal before the Income Tax Appellate Tribunal ("ITAT" for short) which reversed the findings and conclusions of the Primary and First Appellate Authority primarily on the ground that the order of the CIT (Appeals) in the earlier assessment proceeding, relied upon by the Assessing Officer, was reversed in appeal by the ITAT and also that in the course of said earlier assessment proceeding the legal effect of the advice tendered by the Chartered Accountant to reduce the incidence of Income Tax was found to be permissible in law. The High Court reversed the said conclusion of the ITAT which has been challenged by the assessee in the present appeal.

A reading of the order of the ITAT in favour of the assessee which has been reversed by the High Court would indicate that the learned ITAT did not address itself to a very fundamental issue that had arisen before it, namely, effect of the failure of the assessee to produce evidence in support of the services claimed to have been rendered by UTC during the Assessment Year in question i.e. 1984-1985. The answer given by the assessee in response to a specific query made by the Assessing

Officer in this regard was that explanations in this regard had already been submitted for the previous Assessment Year i.e. 1983-1984. If service had been rendered to the assessee by UTC during the Assessment Year in question and service charges had been paid for such service rendered, naturally, it was incumbent on the part of the assessee to adduce proof of such service having been rendered during the period under assessment. There is no dispute on the issue that the assessee did not, in fact, offer any proof of the service rendered during the Assessment Year in question. In such circumstances, the High Court was perfectly justified in reversing the eventual conclusion of the learned ITAT on the basis that the findings and conclusions recorded in the course of the assessment proceedings of the previous year cannot foreclose the findings that are required to be arrived at for the Assessment Year in question i.e. 1984-1985. We, therefore, can find no fault with the order of the High Court on the aforesaid score.

5. Disallowance of loss shown by the assessee in Film business:

> The aforesaid claim had been negatived both by the Assessing Officer and the learned CIT (Appeals) but relief had been afforded by the learned ITAT. The learned ITAT while allowing the deduction appears to have taken into account the view recorded in another proceeding by the ITAT itself in the case of a sister concern [ITA No.3717/Mds/1987]. The relief granted in the case of the sister concern in ITA No.3717/Mds/1987 was on identical facts and, therefore, perhaps, ITAT did not think it proper to depart from the view already taken in the said case of the sister concern. However, the High Court found the aforesaid view taken by the Tribunal in ITA No.3717/Mds/1987 to be wholly untenable and, therefore, interfered with the reliance placed by the ITAT on the aforesaid decision in the present case. There was no legal bar for the High Court in taking the aforesaid view.
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> Taking into account the above and the facts of the case which have been set out by the High Court in paragraphs 29 and 30 of its order, we do not see how the same can be faulted. Having regard to the facts and circumstances in which the “investment” was made and “loss” claimed, we can find no fault in the view taken by the High Court that the entire transaction was a sham transaction and was a calculated device to avoid tax liability.

6. Disallowance of donation to Aparna Ashram:

> Disallowance of donation made to Aparna Ashram by the assessee was refused by the Primary and First Appellate Authority on the ground that the necessary certificate showing that the donee (Aparna Ashram) had complied with the conditions subject to which registration was granted to it under Section 35(2A) of the Act was not produced by the assessee so as to entitle it to the claim of deduction of the donation made. The learned ITAT took the view that the aforesaid conditions were not material. The High Court on due consideration found that the said conditions were necessary preconditions to the grant of statutory registration and had to be satisfied. There is no dispute on the fact that no such certificate had been furnished by the

assessee and also that all Authorities have consistently held that if and when such certificate is produced the consequential benefit can be afforded to the assessee. In the aforesaid circumstances, we do not see how the view taken by the High Court that the assessee was not entitled to the benefit of donation made to Aparna Ashram can be faulted.

7. An issue on which there could be little dispute on law, nevertheless, needs to be dealt with in view of the elaborate arguments advanced on behalf of the appellant – assessee, namely, that the High Court had relied on findings of fact independent of those considered by the learned ITAT which is the final fact finding authority. Reliance in this regard has been placed on several judgments of this Court to contend that issues of fact determined by the Tribunal are final and the High Court in exercise of its reference jurisdiction should not act as an appellate Court to review such findings of fact arrived at by the Tribunal by a process of reappreciation and reappraisal of the evidence on record. The aforesaid position in law has been consistently laid down by this Court in several of its pronouncements out of which, illustratively, reference may be made to Karnani Properties Ltd. Vs. Commissioner of Income-Tax, West Bengal [82 ITR 547], Rameshwar Prasad Bagla vs. Commissioner of Income-Tax, U.P. [87 ITR 421], Commissioner of Income-Tax, Bombay City vs. Greaves Cotton and Co. Ltd. [68 ITR 200] and K. Ravindranathan Nair vs. Commissioner of Income-Tax [247 ITR 178].

8. The legal position in this regard may be summed up by reiterating that it is the Tribunal which is the final fact finding authority and it is beyond the power of the High Court in the exercise of its reference jurisdiction to reconsider such findings on a reappraisal of the evidence and materials on record unless a specific question with regard to an issue of fact being opposed to the weight of the materials on record is raised in the reference before the High Court.

9. Having reiterated the above position in law we do not see how the same can be said to have been transgressed by the impugned order of the High Court. Each relevant fact considered by the High Court to answer the questions referred to it on the claim(s) of deduction raised by the appellant – assesee are acknowledged, admitted and undisputed facts. No fresh determination of facts found by the Tribunal have been made by the High Court. What, however, the High Court did was to take into account certain additional facts, already on record, which were however not taken note of by the Tribunal to arrive at its findings, e.g., that the appellant – assessee had failed to furnish any proof of service rendered by UTC in the course of the relevant Assessment Year i.e. 1984-1985. Alternatively, the High Court construed certain facts as, for example, compliance of the conditions subject to which registration was granted to the Aparna Ashram under Section 35(2A) of the Act to be of significance as against the contrary/different view of the learned Tribunal on this score. There was no departure from the basic facts found by the learned Tribunal in the two illustrative situations cited above, namely, that (i) the assessee had not adduced any proof of service rendered by UTC in the Assessment Year 1984- 1985; (ii) that Aparna Ashram had not complied with the conditions subject to which registration had been granted to it under Section 35(2A) of the Act.

10. The difference in the approach between the learned Tribunal and the High Court, therefore, is not one relating to determination of new or additional facts but was merely one of emphasis on facts

on which there is no dispute. This is surely an exercise that was within the jurisdiction of the High Court in the exercise of its reference power under the provisions of the Act as it then existed.

11. For the aforesaid reasons, we find no fault in the view taken by the High Court while answering the questions referred to it. Accordingly, the appeal is dismissed however without any order as to costs.

.....,J.

(RANJAN GOGOI) .....,J.

(PRAFULLA C. PANT) NEW DELHI JANUARY 18, 2016