SUPREME COURT OF INDIA

Dy. Commissioner of Income Tax, Ujjain

Vs.

Torqouise Investment & Finance Ltd.

C.A.No.4485 of 2007

(Ashok Bhan and Dalveer Bhandari,JJ.)

20.02.2008

ORDER

With Civil Appeal No.4502/2007 Civil Appeal No.4497/2007 Civil Appeal No.4498/2007 Civil Appeal Nos.4499-4501/2007 Civil Appeal No.4495/2007 Civil Appeal No.4496/2007 Civil Appeal Nos.4486-87/2007 Civil Appeal Nos.4488-4489/2007 Civil Appeal No.4492/2007

1. This Order shall dispose of the aforesaid appeals as the point involved is the same. For the sake of convenience, the facts are taken from Civil Appeal No. 4485 of 2007. Assessee-respondent, hereinafter referred to as 'the assessee' filed its return of i ncome for the assessment year 1992-1993 declaring income of Rs.4,30,06,580/- by showing its business a s investment and finance, which was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short 'the Act') on 18.1.1996 on the same income. Along with the return the assessee Civil Appeal No. 4485 of 2007 claimed refund amounting to Rs.29,16.660/- on the basis of credit of deemed TDS on dividend received from a Malaysian company i.e. Pan Century Edible Oils Sdn.Bhd. Malayasia.. The Assessing Officer raised a demand of Rs.1,07,370/- after rejecting the credit c laimed by the assessee on the basis of deemed credit on dividend received from the aforesaid Malaysian company. Being aggrieved, assessee filed an appeal before the CIT(Appeals) which was accepted . Revenue thereafter filed appeal before the Income Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal disposed of the appeal with the observation that Double Taxation Avoidance Agreement (for short 'DTAA') entered into by the Government of India with the Government of Malayasia would override the provisions of the Act if they are at variance from the provisions of the Act. It was held that from a plain reading of Article XI of the DTAA, it was clear that dividend income would be taxed only in the contracting states where such income accrued. Aggrieved by the order of the Tribunal, the department filed further appeal in the H igh Court of Madhya Pradesh at Indore Bench which was admitted on the following questions of law

> "1. Whether ITAT was justified in holding that dividend income earned by the Assessee Civil Appeal No. 4485 of 2007 -3- amounting to Rs.21,35,766/- from a Company called Pan Century Edible Oils SDN, BHD. Malaysia is not liable to be

taxed in the hands of Assessee in India under any of the provisions of the Income Tax Act? 2. In view of Section 5(1)(c) of the Income Tax Act, whether the finding recorded by the ITAT that income earned out of dividend from the Company outside the country is not liable to be taxed under the Act? 3. Whether ITAT was justified in law in recording a finding on an issue which was not raised by the assessee either before the AO or before the CIT(Appeals) but was raised for the first time before the Tribunal and that too in an appeal filed by the Department. 4. Having dismissed the cross objection filed by the assessee, whether the Tribunal was justified in then proceeding to decide the issue raised by the assessee on merits in their favour."

2. On question No.1, the High Court, following the decision of the Madras High Court in the case of *CIT vs. SRM Firm & Ors*. reported in 208 ITR 400 which was affirmed by the Supreme Court in the case of *CIT vs. PVAL Kulandagan Chettiar* reported in 267 ITR 654, held that the Tribunal was justified in holding that dividend income derived by the assessee from a company in Malaysia is not liable to be taxed in the hands of the assessee in India under any of the provisions of the Act. Accordingly, the High Court has Civil Appeal No. 4485 of 2007 answered question No.1 in favour of the assessee and against the department. Insofar as question No.2 is concerned, counsel for the assessee conceded that tax un der section 5(1)(c) of the Income Tax Act would have been exigible but under Article XI of DTAA entered into between India and Malaysia, tax is liable to be levied in the country where the income had accrued. Under these circumstances the Court held that this question as to whether income of an assessee accrued outside the country could be taxed within the country under the provisions of Section 5(1)(c) of the Act did not arise from the order of the Tribu nal. On question Nos.3 and 4, it was observed that this point had been raised by the asse ssee before the CIT(Appeals). Since, the CIT(Appeals) had decided the appeal against the assessee, assessee filed cross-objections before the Tribunal and therefore it could not be said that the assessee had not raised this point earlier or that the assessee had raised this poi nt for the first time before the Tribunal. Insofar as TDS tax credit is concerned, the High Court has observed that it could not go into this question since it has decided the question No.1 in f avour of the assessee to the effect that the income arrived by the assessee in CIVIL Appeal No. 4485 of 2007 Malaysia was not taxable in India at all. We have gone through the judgment of the *Madras High Court in CIT vs. SRM Firm & Ors.(supra)* and judgment of this Court in *CIT vs. PVAL Kulandagan Chettiar (supra*) and we are satisfied that the point involved in these appeals stands concluded in favour of the assessee and against t he revenue by the decision of the *Madras High Court in CIT vs. SRM Firm & Ors.(supra*) which was duly affirmed by this Court in the case of *CIT vs. PVAL Kulandagan Chettiar (supra).* Incidently, it may be mentioned that the review petition filed against the decision of this Court in *CIT vs. PVAL Kulandagan Chettiar (supra)* was also dismissed on 1st November, 2007.

3. Accordingly, these appeals are dismissed. Parties shall bear their own costs.