Serial Nos. 03-06
Regular List

HIGH COURT OF MEGHALAYA AT SHILLONG

ITA No. 1/2019 with
MC (ITA) No. 1/2019
ITA No. 2/2019 with
MC (ITA) No. 2/2019
ITA No. 3/2019 with
MC (ITA) No. 3/2019
ITA No. 4/2019 with
MC (ITA) No. 4/2019

Date of order: 06.07.2023

M/s Ri Kynjai Serenity by the Lake & ors	vs.	Principal Commissioner of Income Tax, Shillong & anr
M/s Hotel Centre Point & ors	vs.	Principal Commissioner of Income Tax, Shillong & anr

Coram:
Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. S. Sen, Adv. with
Mr. S. Modi, Adv.
Mr. P. Nongbri, Adv.

For the Respondents : Mr. S.C. Keyal, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

These four appeals involve a common question of law. In short, the issue is whether the *ratio decidendi* in the judgment reported at (1992) 195 ITR 630 (Gau) *(Commissioner of Income-Tax v. Mahari & Sons)* would be applicable in these matters. The ancillary issue is

whether the dictum in *Mahari & Sons* still holds good despite apparently contrary judgments of the Supreme Court pronounced in matters pertaining to the interpretation of a taxing statute and the strict interpretation of an exemption clause in a taxing statute.

2. In *Mahari & Sons*, members of a family, all of them tribals and individually entitled to the benefits under Section 10(26) of the Income-Tax Act, 1961, were engaged in a business and the question that arose was whether the exemption granted under Section 10(26) of the Act was restricted to an individual or whether the same could be extended to a group of individuals, particularly if they were family members. The Gauhati High Court ruled in *Mahari & Sons* that when certain individuals who belonged to the same family had set up a business jointly, they would be entitled to the benefit of the exemption under Section 10(26) of the Act.

3. In the common judgment and order of the Income-Tax Appellate Tribunal impugned herein, the Tribunal found that the law laid down in *Mahari & Sons* no longer held good. The basis for such view was that subsequent judgments of the Supreme Court had discredited the previous principle that a taxing statute had to be interpreted strictly and the benefit of the doubt had to be given to the assessee. The Tribunal was of the opinion that the law as it now stands is that the taxing statute

has to be interpreted strictly but it no longer holds good that the benefit of any doubt would go to the assessee. Several Supreme Court judgments have been read by the Tribunal in the impugned order to lay down the law in such regard.

4. The further ground indicated in the impugned order is that at any rate, it is axiomatic that when a juristic entity seeks to claim a benefit of an exemption, it must fall within the class or classes of persons to whom the exemption has been extended and that an exemption clause cannot be charitably interpreted to enlarge the scope thereof and confer benefits on others not specifically intended to be covered by the same. In such regard, the Tribunal has held in the order impugned that when Section 10(26) refers to an individual being a member of a relevant scheduled tribe and the income of such person accruing in one of the notified areas, the benefit under such exemption could not be extended to persons other than individuals who are defined in the statute as such other persons cannot be regarded as individuals within the restricted meaning of that word in Section 10(26) of the Act.

5. In such context, both the Tribunal in the order impugned and the Department in course of the present appeals, have referred to Section 2(31) of the Act and Section 184 thereof. The order impugned has also reasoned that since an individual has to be seen distinct from a

partnership firm in view of Section 2(31) of the Act, when an assessee is an association of persons belonging to the same scheduled tribe where their incomes accrue within a notified area, such assessee will not be entitled to the benefit under Section 10(26) of the Act.

6. In the present appeals, in one of the matters the registered partnership firm has a husband and wife as partners. In the other matters, uterine brothers constitute the partnership frim in each case. Going by the dictum in *Mahari & Sons* and, particularly, the interpretation of the concept of family made therein, it would appear that an association, even if it be a partnership, between a husband and wife or between a brother and another, would be entitled to the same exemption as any of the partners would in their individual capacity.

7. It cannot also be missed that the rule which has been enunciated in *Mahari & Sons* has held the field for more than three decades and persons may have organised their businesses in accordance therewith.

8. There is no doubt that the Appellate Tribunal noticed the dictum in *Mahari & Sons* in the common order impugned and, in effect, held that such rule was *per incuriam* or, at any rate, no longer good law in view of subsequent Supreme Court pronouncements. However, the exercise appears to have been done in a rather cavalier manner without covering the entire gamut of the discussion possible on the issue. For

instance, the Tribunal makes no distinction in the order impugned between a partnership firm with close relatives as partners and any other partnership firm where the partners are unrelated. Despite the recognition of the wide ambit of what can be called family business in *Mahari & Sons*, the order impugned places reliance only on the fact that close relatives had formed a partnership firm while missing out the applicability of the dictum in *Mahari & Sons* by virtue of the partners being close relatives.

9. At any rate, none of the Supreme Court judgments referred to in the order impugned by the Tribunal expressly deals with the situation covered by *Mahari & Sons*. The general dicta pertaining to interpretation of a taxing statute and an exemption clause contained in a taxing statute have been relied upon by the Tribunal in the order impugned dated September 13, 2019 to come to a conclusion that the principle enunciated in *Mahari & Sons* no longer holds the field.

10. At the same time, when Constitutional Courts take up challenges to orders passed by a specialised tribunal, such courts have to tread with extreme care and caution. A body that deals with a particular type of matters on an everyday basis would be expected to have greater command over the law applicable in the field and a Constitutional Court

would not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost outlandish.

11. Balancing both sides – the fact that the dictum in *Mahari & Sons* has held the field for three decades and the recognition that the order impugned has been rendered by a specialised tribunal – it is deemed fit and proper to remand the matter before the Appellate Tribunal with a request to the President of the Tribunal to constitute a larger bench without including either member who was a party to the order impugned, for the consideration of the entire gamut of the matter. The President is requested to ensure that a larger bench of at least three members is constituted within a month of the receipt of an authenticated copy of this order with a request to the relevant bench to dispose of the legal issue which has arisen as expeditiously as possible and, preferably, within three months of the first sitting of such bench.

12. ITA No. 1 of 2019 with MC (ITA) No. 1 of 2019; ITA No. 2 of 2019 with MC (ITA) No. 2 of 2019; ITA No. 3 of 2019 with MC (ITA) No. 3 of 2019; and ITA No. 4 of 2019 with MC (ITA) No. 4 of 2019 are disposed of without expressing any final opinion on the primary legal issue which has been raised, but by setting aside the common order impugned and requiring the matter to be considered afresh.

13. None of the observations herein would stand in the way of the special bench of the Appellate Tribunal deciding the primary legal issue in accordance with law.

14. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
06.07.2023
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