IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1914 of 2008

The Commissioner of Income Tax,
Chennai.
.... Appellant

-vs-

Shri Suresh Krishna,
Old No. 79, New No. 44,
Poes Garden,
Chennai – 600 086.
...Respondent

This Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'C' Bench, dated 11.04.2008 in ITA No.638/Mds/2007, for the Assessment year 2000-01.

For Appellant : Mr.T.R.Senthil Kumar

For Respondent : Mr.N.V.Balaji

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue is directed against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, dated 11.04.2008 in ITA No.638/Mds/2007, for the Assessment year 2000-01.

*2.*Heard Mr.T.R.Senthil Kumar, learned Counsel for the Revenue and Mr.N.V.Balaji, learned Counsel for the Respondent.

3.This Appeal has been admitted on 02.12.2008, on the following Substantial Questions of Law:

> *"(i)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the dividend received from the units cannot be reduced from the cost of acquisition of the shares for computing short term capital gains from the sale of the units post dividend?*
>
> *(ii)Whether Sec.94(7) of the Act is clarificatory in nature and hence retrospective in operation?"*

4.The above referred Substantial Questions of Law were considered by the Hon'ble Supreme Court in the case of **Commissioner of Income-tax, Mumbai Vs. Walfort Share & Stock Brokers (P) Ltd., [(2010) 326 ITR 1 (SC) dated 06.07.2010** and decided in favour of the assessee.

5.The learned counsel for the Revenue does not dispute the fact that the Substantial Questions of Law, framed for consideration, have been answered in favour of the assessee by the Hon'ble Supreme Court.

6.In the light of the same, this Tax Case Appeal filed by the Revenue is dismissed and the Substantial Questions of Law, framed for consideration, are answered in favour of the appellant/assessee. No costs.

[T.S.S., J.] & [V.B.S., J.]

msk/mrm **01.11.2018**

To

1.The Income Tax Appellate Tribunal Madras 'B' Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

msk/mrm

T.C.A.No.1914 of 2008

01.11.2018