IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-12-2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.903 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant

-vs-

Shri C.S.Varadhan ... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 17.10.2007, made in ITA No.1548/Mds/2006.

For appellant : Mr.T.Ravikumar,
Senior Standing Counsel.

For respondent : Mr.R.Vijayaraghavan,
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

(Delivered by Dr.Anita Sumanth,J.)

The questions of law, on which this appeal has been admitted, are as follows :

> *"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the amounts paid by the company towards personal expenses of the assessee cannot be taxed in its hands under Section 2 (24) (iv) as the amount was routed through the franchisee, which was the HUF of the assessee ?*
>
> *2. Whether on the facts and circumstances of the case, the Tribunal was right in remanding the matter back to the assessing officer on the issue of receipt of commission, when the entity which is supposed to have received the commission was formed only after the survey was conducted ?"*

2. This appeal relates to Assessment Year 2002-2003. On perusal of the order of the Income Tax Appellate Tribunal dated 17.10.2007 impugned before us, we find that the Tribunal's conclusion was based on its own orders for Assessment Years 1996-1997 to 2001-2002 in ITA Nos.2089 to 2094(Mds)/2005, dated 23.06.2006.

3. The aforesaid orders of the Tribunal have travelled in appeal at the instance of the Commissioner of Income Tax and a Division Bench of this Court has, in T.C.A.Nos.48 to 71 of 2007 in the case of *Commissioner of Income Tax* v. *C.S.Srivatsan & Others* (358 ITR 10), decided the identical questions of law as before us in favour of the assessee and against the revenue.

4. In the light of the above, this appeal is decided in favour of the assessee and against the revenue. Appeal is dismissed. No costs.

(V.K.,J.) (A.S.M.,J.)
14-12-2018

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order

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To
Income Tax Appellate Tribunal,
Madras 'A' Bench,
Chennai.

DR.VINEET KOTHARI, J.
and
DR.ANITA SUMANTH, J.

dixit

T.C.A.No.903 OF 2008

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