IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.08.2018
CORAM

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

Tax Case (Appeal) Nos.1021 and 1022 of 2008

M/s.Tamil Nadu Urban Development Fund,
"Vairam Complex", 1st Floor,
No.112, Sir Thyagaraya Road,
T.Nagar, Chennai-600 017. ... Appellant in both Appeals

-vs-

The Income-tax Officer,
Business Ward-II (4),
121, Mahatma Gandhi Road,
Chennai-600 034. ... Respondent in both Appeals

Tax Cases (Appeals) filed under Section 260-A of the Income Tax Act, 1961 against the common order of the Income-tax Appellate Tribunal, Chennai "C" Bench dated 01.02.2008 in I.T.A.Nos.670 & 671/Mds/2007 for the assessment years 2002-03 and 2003-04 respectively.

For Appellant (in both Appeals) : Mrs.Sree Lakshmi Valli
For Respondent (in both Appeals) : Mr.M.Swaminathan, Standing Counsel and M/s.S.Premalatha

COMMON JUDGMENT
[Delivered by T.S.Sivagnanam, J.]

These Tax Case Appeals, by the assessee, are directed against the common order passed by the Income-tax Appellate Tribunal, Chennai "C" Bench dated 01.02.2008 in I.T.A.Nos.670 & 671/Mds/2007 relating to the assessment years 2002-03 and 2003-04 respectively.

2.The above appeals have been admitted on 29.07.2008, on the following substantial questions of law:-

> "(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal ought not to have upheld the order of the

Commissioner of Income Tax (Appeals) and cancelled the levy of penalty under Sec.271 (1) (c) of the Income Tax Act and did not err in merely setting aside the order of penalty and remanding the matter to the Income Tax Officer?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that penalty under Section 271 (1)(c) of the Income Tax Act should be a consequential proceeding to the quantum proceeding which was already set aside to the file of the Assessing Officer?"

3.It is submitted by the learned counsel for the appellant that on remand, while giving effect to the order, penalty has not been levied and therefore, the appeals have become infructuous.

4.Hence, the appeals stand dismissed as infructuous and the substantial questions of law, raised for consideration, are left open. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

abr
To

1. The Income-tax Appellate Tribunal,
Chennai "C" Bench.Sastri Bhavan, Chennai.

2. The Income-tax Officer,
Business Ward-II (4),
121, Mahatma Gandhi Road,
Chennai-600 034.

3. The Commissioner of Income-tax (Appea;s)-VI,
Chennai.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.59644
+1cc to Mr.N.Muthukumar, Advocate, S.R.No.60020

T.C.(A) Nos.1021 and 1022 of 2008

rr(co)
cs/16/10/2018