IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

T.C. (Appeal).No.884 of 2008

Commissioner of Income Tax
Chennai ...Appellant

vs

Shri. C.S.Seshadri
153 G.N.Chetty Street
T.Nagar
Chennai – 600 017 ...Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 17th October 2007 in ITA No.1549/Mds/2006 for the Assessment year 2002-03.

For Appellant : Mr.R.Suresh Kumar

For Respondent : Mr.Vikram Vijayaraghavan

JUDGMENT

Heard Mr.R.Suresh Kumar, learned counsel appearing for the appellant and Mr.Vikram Vijayaraghavan, learned counsel appearing for the respondent.

2. The above appeal has been admitted on the following substantial questions of law:

> *"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."

3. In respect of identical issue in the case of other related assessees, the Revenue challenged the orders before the Income Tax Appellate Tribunal, which remanded the matter to the Assessing Officer with a direction to decide the issue in controversy afresh after

providing adequate opportunity to the assessee of being heard. The Revenue challenged one such order passed by the Income Tax Appellate Tribunal in a batch of 24 Tax Case Appeals in T.C.A.Nos.48 to 71 of 2007 governing the Assessment years 1996 – 97 to 2001-02. The very same substantial questions of law was considered and the appeal filed by the Revenue was dismissed in the case of Commissioner of Income-Tax, Chennai Vs.C.S.Srivatsan reported in [2013] 30 tazmann.com 423 (Madras). The operative portion of the judgment reads as follows:

> *"4.8.Only based on this statement of the Revenue, the Income Tax Appellate Tribunal felt that it is a case to be investigated by the Assessing Officer. It is also relevant to point out that the assessee in all these cases did not file any return in their individual capacity and notices under Section 147 were issued only on the ground that they did not file any return disclosing the perquisites and benefits received by them from the company and that they are guilty of omission to file the returns. The Income Tax Appellate Tribunal has ordered remand only after considering the nature and circumstances of the transaction and in fact, after considering the modus operandi of the entire group. Learned counsel for the respondent has also filed the assessment order for the assessment year 2000-2001, by way of additional typed set of papers. Under such circumstances, the order of*

remand made by the Income Tax Appellate Tribunal is perfectly justified.

5. The findings given by the Income Tax Appellate Tribunal did not warrant any interference, having regard to legal and factual aspects discussed above.

6. In the result, all the Tax Case Appeals are dismissed, confirming the orders of the Income Tax Appellate Tribunal. No costs."

Following the above decision, this Tax Case Appeal is dismissed and the substantial questions of law framed is answered in favour of the assessees and against the revenue.

[T.S.S.J.,] [N.S.S.,J]

04.04.2018

gpa

To

The Income Tax Appellate Tribunal Madras 'A' Bench
Chennai

T.S.SIVAGNANAM.J.,
&
N.SESHASAYEE.J.,

gpa

T.C.A.No.884 of 2008

04.04.2018