IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.12.2020
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
Tax Case Appeal No.270 of 2020

The Commissioner of Income Tax, Chennai ...Appellant

Vs

Smt.Praveen Kumar Damayanthi ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.9.2019 passed by the Income Tax Appellate Tribunal, Madras 'A'/SMC Bench, Chennai made in I.T.A.No.781/Chny/ 2019 for the assessment year 2015-16 preferred against the Order of the Commissioner of Income Tax (Appeals)-5 chennai-34 dated 10.09.2018 made in ITA.No.406/CIT (A)-5/2017-2018 filed against the Assessment order of the Income Tax Officer, Non-Corporate Ward 4(3) Chennai dated 30.12.2017 for the Assessment year 2015-16.

For Appellant: Mr.T.Ravikumar, SSC
For Respondent: Mr.Prithivi Chopda

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 04.9.2019 made in I.T.A.No.781/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai, 'A'/SMC Bench ('the Tribunal' for brevity) for the assessment year 2015-16.

2. The appeal was admitted on 08.9.2020 on the following substantial questions of law :

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in setting aside the well reasoned order passed by the Assessing Officer for re-examination, especially when the assessing officer had considered all the material placed while passing the assessment order?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the file of the Assessing Officer by quoting the decision in the case of Sunil Kumar Lalwani and that Aashesh Kumar Lalwani wherein the onus has been shifted to the revenue with a direction that the Assessing Officer is to bring on record the role of the Assessee in promoting the Company and the relation of the Assessee if any with that of the promoters and role of inflating of prices etc., which exercise had already been done by the AO and the SEBI? and

3. Is not the finding of the Tribunal perverse especially when the decision of the Tribunal is contrary to the time tested Principal that the person who asserts a fact has to discharge the initial burden cast upon him to show that the said facts are true and only thereafter the burden would shift to the department?"

3. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.Prithivi Chopda, learned counsel appearing for the respondent/assessee.

4. The learned counsel on behalf of the assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 06.12.2020 and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty. Consequently, the substantial questions of law framed are left open. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.The Registrar
The Income Tax Appellate Tribunal, 'A'/SMC Bench, Chennai.

2.The Commissioner of Income tax
(Appeals)-5
Chennai-34

3.The Income Tax Officer,
Non-Corporate Ward4(3)
Chennai

4.The Assistant Registrar
Appeal Examiner Main Section
High Court, Madras-104

+1 cc to Mr.T.Ravikumar Advocate sr42462
+1 cc to Mr.T.Pramod Kumar Chopda Advocate sr41643

TCA.No.270 of 2020

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