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.153 of 2020

The Commissioner of Income
Tax, Non Corporate Circle 10(4),
Chennai ...Appellant

Vs

Mr.Suresh Kumar (HUF) ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.10.2019 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.134/Chny/2019 for the assessment year 2014-15 against the order dated 20.11.2018 made in ITA.No.70/CIT(A)-12/2017-18 passed by the Commissioner of Income Tax(Appeals)-12, Chennai for the Assessment year 2014-15, against the order date 26.12.2017 made in PAN No.AAMH55343E passed by the Income Tax Officer, Non Corporate Ward-10(4), Chennai-34 for the Assessment year 2014-15.

For Appellant : Mr.M.Swaminathan, SSC
assisted by Ms.V.Pushpa, JSC
For Respondent : served and no appearance

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 11.10.2019 made in I.T.A.No.134/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2014-15.

2. The appeal was admitted on 09.3.2020 on the following substantial questions of law :

> "1. Whether the Income Tax Appellate Tribunal was right and justified in setting aside the order passed by the Assessing Officer to re-examine the matter when the Assessing Officer has already duly examined the matter before passing the assessment order? And
>
> 2. Whether the Income Tax Appellate Tribunal was right and justified in remitting the issue back to the file of the Assessing Officer and shifting the onus to the Revenue with a direction that the Assessing Officer shall bring on record the role of the assessee in promoting the company and the relationship of the assessee, if any with the promoters, role of the assessee in inflating the price of shares etc?"

3. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Junior Standing Counsel appearing for the appellant/Revenue. Though the respondent is served and his name printed in the cause list, non appears for him.

4. The learned Senior Standing Counsel appearing on behalf of the Revenue has been instructed by the Department to submit that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 09.6.2020 seeking to avail the benefit of the scheme 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal, 'B' Bench, Chennai.

2.The Commissioner of Income Tax(Appeals)-12, Chennai.

3.The Income Tax Officer, Non Corporate Ward-10(4),
Room No.b16,VI floor, Wanapathy Block,
Aayakar Bhawan, No.121, Mahatma Gandhi Road,
Chennai-600034

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.42108

TCA.No.153 of 2020

RLD(CO)
KKV/07/01/2021