IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
T.C.A.Nos.239 to 244 of 2012

Mr.S.Manoharan .. Appellant in all TCAs

Versus

The Assistant Commissioner of Income Tax,
Central Circle - II,
Madurai. .. Respondent in all TCAs

Prayer in T.C.A.No.239 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1495/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of the addition of Rs.5 Lakhs being the advance paid towards of purchase of property for and on behalf of Sri Lakshmana Iyer in the computation of taxable total income forming part of the assessment framed u/s.143(3) r/w Section 153A of the Act relating to the Assessment Year 2002-03.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.190/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AITPM1981H/CC-II/MDU for the Assessment year 2002-2003.

Prayer in T.C.A.No.240 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1496/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of the addition of Rs.5 Lakhs being the amounts paid for settlement with brothers and sisters for acquiring a property at S.No.4 and W.38, West Masi Street, D.No.196, TS 918/2, Madurai South, Madurai in consequence to the execution of Partition Deed dated 17.5.2003 and further to challenge the addition of Rs.17,23,636/- being the suppression in sales arrived at by the Respondent in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153A of the Act relating to the Assessment Year 2004-05.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.191/2009/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AITPM1981H/CC-II/MDU for the Assessment year 2004-2005.

Prayer in T.C.A.No.241 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1497/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of the addition of Rs.6,66,000/- being the amounts reflected in the pronotes, treated as unexplained investment and further, to challenge the addition of Rs.15,86,970/- being the suppression in sales arrived at by the Respondent in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153A of the Act relating to the Assessment Year 2005-06.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.192/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AITPM1981H/CC-II/MDU for the Assessment year 2005-2006.

Prayer in T.C.A.No.242 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1498/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of the addition of Rs.1,10,000/- being the advance paid towards of purchase of property for and on behalf of Sri Lakshmana Iyer in the computation of taxable total income forming part of the assessment framed u/s.143(3) r/w Section 153A of the Act and further to challenge the addition of Rs.15,37,134/- being the suppression of sales arrived at by the respondent in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153A of the Act relating to the Assessment Year 2006-07.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.193/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AIPM1981H/CC-II/MDU for the Assessment year 2006-2007.

Prayer in T.C.A.No.243 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1499/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of various additions including the addition towards investment in landed property at Poonjeri Village in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153A of the Act and further to challenge the addition of Rs.21,75,091/- being the suppression in sales arrived at by the Respondent in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153A of the Act relating to the Assessment Year 2007-08.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.194/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AIPM1981H/CC-II/MDU for the Assessment year 2007-2008.

Prayer in T.C.A.No.244 of 2012:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T.A.No.1500/MDS/2011 dated 08.12.2011 and is filed to challenge the action of the Income Tax Appellate Tribunal in dismissing the appeal mainly relating to the grounds raised to challenge the sustenance of the estimated addition of Rs.12,46,235/- being the suppression in sales arrived at by the Respondent in the computation of taxable total income forming part of the assessment framed u/s 143(3) of the Act relating to the Assessment Year 2008-09.

Appeal filed against the order of the Commissioner of Income-tax (Appeals)-II, Madurai, order dated 23.06.2011 made in ITA.No.195/2009-2010 preferred against the order of the Assistant Commissioner of Income Tax, Central Circle-II Madurai, order dated 31.12.2009 made in PAN.No.AIPM1981H/CC-II/MDU for the Assessment year 2008-2009.

For Appellant : Mr.K.G.Raghunath
[in all TCAs]

For Respondent : Ms.V.Pushpa
Junior Standing counsel
[in all TCAs]

COMMON JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the common order dated 08.12.2011 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1495/MDS/2011, I.T.A.No.1496/MDS/2011, I.T.A.No.1497/MDS/2011, I.T.A.No.1498/MDS/2011, I.T.A.No.1499/MDS/2011 and I.T.A.No.1500/MDS/2011 for the Assessment Years 2002-03, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 respectively. The assesse has raised the following Substantial Questions of Law for consideration:

"T.C.A.No.239 of 2012:

1. Whether the Appellate Tribunal is correct in Law in sustaining the addition of Rs.5 Lakhs relating to the transaction entered into for and on behalf of Shri Lakshmana Iyer in an attempt to purchase the property for him in the computation of taxable total income forming part of the search assessment under consideration inspite of lack of statutory mandate to make such addition as well as overlooking the evidence in the form of confirmation letter filed from the said person?

2. Whether the Tribunal is correct in law in sustaining the action of the Lower Authorities in bringing to tax the said amount as unexplained/unaccounted income of the Appellant herein without cross verification of the facts with the property owner as well as with Shri Lakshmana Iyer?

3. Whether the Tribunal is correct in law in not considering the said grounds of appeal forming the part of the statutory Form No.36 for recording findings to dispose off the appeal which results in perversity in the order passed by them while erroneously rejecting the plea for telescoping?"

T.C.A.No.240 of 2012:

1. Whether the Appellate Tribunal is correct in Law in sustaining the addition of Rs.5 Lakhs based on the release/partition deed even though the affidavits filed by the brothers & sisters of the Appellant highlighted the perversity in the order passed by them?

2. Whether the Tribunal is correct in law in sustaining the action of the Lower Authorities in bringing to tax the said amount as unexplained/unaccounted income of the Appellant herein without cross verification of the facts with the parties concerned?

3. Whether the Tribunal is correct in law in not considering the said grounds of appeal forming the part of the statutory Form No.36 for recording findings to dispose off the appeal which results in perversity in the order passed by them while erroneously rejecting the plea for telescoping?

4. Whether the Tribunal is correct in law in sustaining the assessment of profit at 15% of suppression of sales in the computation of taxable total income even though the quantification of the suppressed of sales and the basis for adopting net profit at 15% of such quantified suppressed sales were not supported by materials proving perversity in their order?

T.C.A.No.241 of 2012:

1. Whether the Appellate Tribunal is correct in Law in sustaining the addition of Rs.6,66,000/- based on the pronotes relatable to the employees of the Appellant as unaccounted investment even though there was no evidence for actual flow of funds unearthed during the course of search and further the explanation offered in relation to such pronotes for retaining/keeping the employees out of the financial irregularities inasmuch as such employees had admittedly dealt with cash sales on a day to day basis?

2. Whether the Tribunal is correct in law in sustaining the action of the Lower Authorities in bringing to tax the said amount as unexplained/unaccounted investment of the Appellant herein without cross verification of the facts with the parties concerned?

3. Whether the Tribunal is correct in law in not considering the said grounds of appeal forming the part of the statutory Form No.36 for recording findings to dispose off the appeal which results in perversity in the order passed by them while

erroneously rejecting the plea for telescoping?

4. Whether the Tribunal is correct in law in sustaining the assessment of profit at 15% of suppression of sales in the computation of taxable total income even though the quantification of the suppressed of sales and the basis for adopting net profit at 15% of such quantified suppressed sales were not supported by materials proving perversity in their order?

T.C.A.No.242 of 2012:

1. Whether the Tribunal is correct in law in sustaining the assessment of profit at 15% of suppression of sales in the computation of taxable total income even though the quantification of the suppressed of sales and the basis for adopting net profit at 15% of such quantified suppressed sales were not supported by materials proving perversity in their order?

T.C.A.No.243 of 2012:

1. Whether the Appellate Tribunal is correct in Law in sustaining the addition of Rs.37,30,000/- being the alleged payment relating to the brokerage and arbitration & eviction charges based on the assumption of facts which led to perversity in the order passed by them?

2. Whether the Tribunal is correct in law in not considering the said grounds of appeal forming the part of the statutory Form No.36 for recording findings to dispose off the appeal which results in perversity in the order passed by them while erroneously rejecting the plea for telescoping?

3. Whether the Tribunal is correct in law in sustaining the assessment of profit at 15% of suppression of sales in the computation of taxable total income even though the quantification of the suppressed of sales and the basis for adopting net profit at 15% of such quantified suppressed sales were not supported by materials proving perversity in their order?

4. Whether the Tribunal is correct in law in sustaining the addition of Rs.1,06,000/- towards deficit stamp duty in respect of Rameshwaram Street, T.Nagar property acquisition inspite of the fact of lack of seized materials on the said payment out of unaccounted income?

T.C.A.No.244 of 2012:

1. Whether the Tribunal is correct in law in sustaining the assessment of profit at 15% of suppression of sales in the computation of taxable total income even though the quantification of the suppressed of sales and the basis for adopting net profit at 15% of such quantified suppressed sales were not supported by materials proving perversity in their order?"

2. We have heard Mr.K.G.Raghunath, learned counsel for the appellant/assessee and Ms.V.Pushpa, learned Junior Standing counsel for the respondent/Revenue.

3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

4. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

5. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation

of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

6. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the declaration under Section 4 of the Act.

7. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping these appeals pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the assessee. Accordingly, all the Tax Case Appeals stand disposed of on the ground that the assessee has already filed a declaration and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore these appeals 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 appeals and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. With this observation, all the Tax Case Appeals stand disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
'C', Chennai.

2.The Commissioner of Income Tax(Appeals)-II,
Madurai

3.The Assistant Commissioner of Income Tax,
Central Circle-II, Madurai

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T.C.A.Nos.239 to 244 of 2012

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