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.403 to 408 of 2015

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.403 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.337/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2002-03, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.28/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2002-03.

Prayer in T.C.A.No.404 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.338/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2004-05, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.23/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2004-05.

Prayer in T.C.A.No.405 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.339/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2005-06, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.24/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2005-06.

Prayer in T.C.A.No.406 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.340/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2006-07, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.25/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2006-07.

Prayer in T.C.A.No.407 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.341/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2007-08, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.26/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2007-08.

Prayer in T.C.A.No.408 of 2015:- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.342/Mds/2014 dated 28.08.2014 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 penalty imposed u/s 271(1)(c) of the Act after the confirmation of the addition (s) in the computation of taxable total income forming part of the assessment framed u/s 143(3) r/w Section 153(A) of the Act relating to the Assessment Year 2008-09, Appeal filed against the order of the Commissioner of Income Tax (Appeals)-I, Madurai, made in ITA.No.27/2012-13 order dated 07.01.2014 and preferred against the order of the Assistant Commissioner of Income Tax, Central Circle -II, Madurai made in PAN.No.AITPM1981H/Cen.Cir.II/Mdu, order dated 11.06.2012 for the Assessment year 2008-09.

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 28.08.2014 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.337/Mds/2014, I.T.A.No.338/Mds/2014, I.T.A.No.339/Mds/2014, I.T.A.No.340/Mds/2014, I.T.A.No.341/Mds/2014, I.T.A.No.342/Mds/2014 for the Assessment Years 2002-03, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 respectively. These appeals were admitted on 07.09.2015 on the following Substantial Questions of Law:

"*T.C.A.Nos.403 to 408 of 2015:*

1. Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty under Section 271(1)(c) of the Act consequent to the sustenance of 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 in spite 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? And

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?"

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.

Sd/-
Assistant Registrar (C.S.IV)

/True Copy/

Sub Assistant Registrar

To

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

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

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

+1cc to Mr.M.Swaminathan, Advocate SR.NO.42837

AKM/18.02.21/6P- 5C/

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22.12.2020