IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.Nos.246 to 248 of 2020

Shri K.Srikanth ...Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle - II(4)
Chennai. ...Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 19.05.2020 made in I.T.A.No.1016/Chny/2012, I.T.A.No.307/Chny/2010, and I.T.A.No.1015/Chny/2012 respectively relating to the Assessment Year 2001 - 2002, against the order of the Assistant Commissioner of Income Tax, Company Circle II(4) Chennai dated 30.04.2012 and made in AAFPS6375K for the Assessment year 2001-2002.

against the order of the Commissioner of Income Tax, Appeals III, Chennai dated 27.03.2012 and made in I.T.A.No.283/2010-2011/A-III and I.T.A.No.420/2008-2009/A-III for the Assessment year 2001-2002 respectively.

Against the order of the Deputy Commissioner of Income Tax, Company Circle II(4) Chennai 34 dated 08.11.2010 and made in PAN/GIR No. AAFPS6375K for the Assessment year 2001-2002 and order of the Assistant Commissioner of Income Tax, Company Circle II(4) Chennai dated 31.12.2008 and made in PAN/GIR No. AAFPS6375K for the Assessment year 2001-2002 respectively.

For Appellant : Mr.A.S.Sriraman

For Respondent : Ms.R.Hemalatha
Senior Standing Counsel

JUDGMENT

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

These appeals have been filed by the Assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the common order dated 19.05.2020 passed by the Income Tax Appellate Tribunal, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.307/Chny/2010, I.T.A.No.1015/Chny/2012 and I.T.A.No.1016/Chny/2012 for the Assessment Year 2001 - 2002. The appeals were admitted on 31.08.2020 on the following Substantial Questions of Law :

> "1. Whether the reopening of the assessment under Section 147 of the Income Tax Act, 1961 is valid in law?
>
> 2. Whether the Commissioner of Income Tax was justified in invoking the power under Section 263 of the Act and the twin conditions prescribed have been complied with concurrently?
>
> 3. Whether the payment towards the bank liability under OTS settlement scheme would amount to diversion of income by overriding title as against the application of income for such sale within the scope of Section 48 of the Act?
>
> 4. Whether the payment of bank liability under OTS scheme would constitute alternatively as expenses incurred in connection with the transfer for removing the encumbrance on the transferred asset within the scope of Section 48 of the Act?"

2. We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant/assessee and Ms.R.Hemalatha, Learned Senior 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 declarations under Section 4 of the Act on 23.11.2020.

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, 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 declarations 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, the Tax Case Appeals stand disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Ssd
To
1. The Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2.The Assistant Commissioner of Income Tax
Company Circle II(4)
Chennai

3.The Commissioner of Income Tax
Appeals III, Chennai

4.The Deputy Commissioner of Income Tax
Company Circle II(4)
Chennai 34.

5.The Assistant Registrar
AE Main Section
High Court, Madras 104.

+1 CC to Mr.T. Ravikumar, Advocate sr 41616.

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SV(CO)
SP(02/02/2021)