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.No.252 of 2020

Commissioner of Income Tax
Non Corporate Circle 10(2)
Chennai ..Appellant

Versus

M/s J.Ashok Kumar & Sons
No.30, Market Street,
Perambur,
Chennai - 600 029. ..Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 29.11.2019 made in I.T.A.No.2519/Chny/2019 relating to the Assessment Year 2015-2016 against the order of the Commissioner of Income Tax (Appeals)-12 Chennai in I.T.A.No.107/CIT(A)-12/2017-2018 dated 19.07.2019 for the Assessment year 2015-2016, against the order of the Income Tax Officer, Non Corporate Ward-10(2) Chennai dated 21.12.2017 made in under Section 143(3) of the Income Tax Act 1961.

For Appellant : Mr.M.Swaminathan
For Respondent : Mr.Ashok Pathy
for M/s Pass Associates

JUDGMENT

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

This appeal has been filed by the revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 29.11.2019 passed by the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) in I.T.A.No.2519/Chny/2019 for the Assessment Year 2015-16. The appeal was admitted on 31.08.2020 on the following Substantial Questions of Law:

> "(i) 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?

(ii) Whether the Income Tax Appellate Tribunal was right in 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 promotors, role of the assessee in inflating the price of shares etc.,

2. We have heard Mr.M.Swaminathan, learned counsel appearing for the appellant/revenue and Mr.Ashok Pathy, learned counsel for the respondent/assessee for M/s Pass Associates.

3. The learned counsel for the respondent / assessee, on instructions, submitted that the respondent / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

4. 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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

5. 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.

6. 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.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be 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 Division Bench for orders.

8. In the light of the above, We direct the respondent / assessee to file the Form No.I on or before 30.12.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeal stands 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

ssd
To
1. The Commissioner of Income Tax
Non Corporate Circle 10(2)
Chennai

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

3.The Income Tax Officer
Non Corporate Ward-10(2)
Chennai

+1 Cc to Mr.M.Swaminathan, Advocate sr 41605.

GP(CO)
SP(18/01/2021)