IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

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

T.C.A.No.349 of 2020

The Principal Commissioner of Income Tax,
Chennai. ..Appellant

Versus

Shri Anil Kumar Jain ..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 made in I.T.A.No.3525/Chny/2018 dated 10.01.2020 relating to the Assessment Year 2013-14.

This Appeal filed against the order of Income Tax Appellate Tribunal, Madras "A" Bench, Chennai dated 10.01.2020 passed in I.T.A.No.3525/chny/2018 PAN No.AAFPA9899Q for the Assessment year 2013-2014 against the Commissioner of Income Tax (Appeals)5 in I.T.A.No.291/CIT(A)-5/2017-2018 dated 28.09.2018 PAN No. AAFPA9899Q fot the Assessment year 2013-2014 against the Income Tax Officer Non Corporate Ward 4(1) Chennai PAN NO. AAFPA9899Q for the Assessment year 2013-2014 dated 22.12.2017.

For Appellant : Mr.T.Ravikumar
Senior Standing counsel

For Respondent : Mr.P.Hari

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), is directed against the order dated 10.01.2020 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.3525/Chny/2018 for the Assessment Year 2013-14. This appeal was admitted on 06.10.2020 on the following Substantial Questions of Law:

"1.Whether on the facts and in the circumstances of the case, the Tribunal was right in setting aside the well reasoned order passed by the Assessing officer for re-examination, especially when the Assessing Officer had duly examined all the material placed while passing the assessment order?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the file of the Assessing Officer by quoting the decision in the case of Kanhaiyal and Sons (HUF) in ITA.No.1849/Chny/2014 Sunil Kumar Lalwani and that Aashesh Kumar Lalwani wherein the onus has been shifted to the Revenue with a direction that the Assessing Officer is to bring on record the role of the Assessee in promoting the Company and the relation of the Assessee, if any with that of the promoters and role of inflating of prices etc., which exercise had already been done by the Assessing Officer and the SEBI?

3. Is not the finding of the Tribunal perverse especially when the decision of the Tribunal is contrary to the time tested principle that the person, who asserts a fact has to discharge the initial burden cast upon him to show that the said facts are true and only thereafter the burden would shift to the Department?"

2. We have heard Mr.T.Ravikumar, learned Senior Standing counsel for the appellant/Revenue and Mr.P.Hari, learned counsel for the respondent/assessee.

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 respondent/assessee that the assessee has already filed the declaration under Section 4 of the Act on 03.11.2020.

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 this appeal 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 Appeal stands 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 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 Division Bench for orders.

8. With this observation, 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

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

2.The Commissioner of Income Tax(Appeals)5
No.121 Mahathma Gandhi Road
Nungambakkam, Chennai 600 034.

3.The Income Tax Officer
Non Corporate Ward 4(1)
Chennai.

+1 Cc to M/s.T. Ravikumar, Advocate sr 36032.

T.C.A.No.349 of 2020

VSNII(CO)
SP(10/12/2020)