IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Tax Case Appeal No.396 of 2020

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

Vs

Smt.Pushpa Bai ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 10.1.2020 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.3523/Chny/2018 for the assessment year 2015-16 against the Commissioner of Income Tax Appeals(5) Chennai 34 in I.T.A.No.306/CIT(A)-5/2017-2018 dated 28.09.2018 against the Income Tax Officer Non Corporate Ward 5(4) Chennai in PAN AAHPP5053B dated 27.12.2017.

For Appellant: Mrs.R.Hemalatha, SSC
For Respondent: Mr.P.Hari

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 10.1.2020 made in I.T.A.No.3523/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2015-16.

2. The appeal has been admitted on 29.10.2020 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 AO 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 Principal 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?”

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing on behalf of the appellant and Mr.P.Hari, learned counsel appearing for the respondent.

4. The learned counsel appearing for the respondent/assessee submits that the respondent/assessee has filed the declaration/ undertaking under the Vivad Se Vishwas Scheme on 20.11.2020 ie. today and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. 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 appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty. 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 Chennai 34.

3.The Income Tax Officer
Non Corporate Ward 5(4)
Chennai

4.The Principal Commissioner of Income Tax
Chennai

+1 CC to Mr.T. Ravikumar, Advocate sr 37482.

TCA.No.396 of 2020

PVS(CO)
SP(09/12/2020)