

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

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

T.C.A.No.372 of 2020

M/s.Nannusamy Mohan (HUF)
AGS Automobiles, Vilangudi,
Madurai Dindigul Main Road,
Madurai
(PAN:AAGHM 3049D)

.. Appellant

Versus

The Assistant Commissioner Income Tax,
Central Circle - 1,
Madurai.

.. 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, Chennai 'A' Bench, dated 03.12.2018 made in I.T.A.No.2576/Chny/2017 relating to the Assessment Year 2011-12.

Against the order of the Commissioner of Income Tax (Appeals)-19, Chennai dated 03.07.2017 made in ITA No.196/16-17 against the order of the Assistant Commissioner of Income Tax, Central Circle-1, Madurai dated 30.11.2016 made in PAN/GIR No.AAGHM3049D for the Assessment Year 2011-12.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.T.R.Senthilkumar
Senior Standing counsel and
M/s.K.G.Usharani

JUDGMENT

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

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 03.12.2018 passed by the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) in I.T.A.No.2576/CHNY/2017 for the Assessment Year 2011-12. The appeal is admitted on the following Substantial Questions of Law:

"1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was perverse in not considering all the grounds raised in Cross Objection, viz. (1) claim of exemption in respect of sale of agricultural land (2) claim of deduction by way of cost inflation Index and cost of plot of land purchased in computing deduction u/s.54F of Income Tax Act?

2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the disallowance of cost of improvement in providing Modern Kitchen in the flats purchased?"

2. We have heard Mr.M.P.Senthil Kumar, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing counsel and M/s.K.G.Usha Rani, learned counsel for the respondent/Revenue.

3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / 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 17th March 2020 and published in the Gazette of India on 17th 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 appellant / assessee to file the Form No.I on or before 20.11.2020 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax (Appeals)-19,
108, Mahatma Gandhi Road, Nungambakkam, Chennai -34.

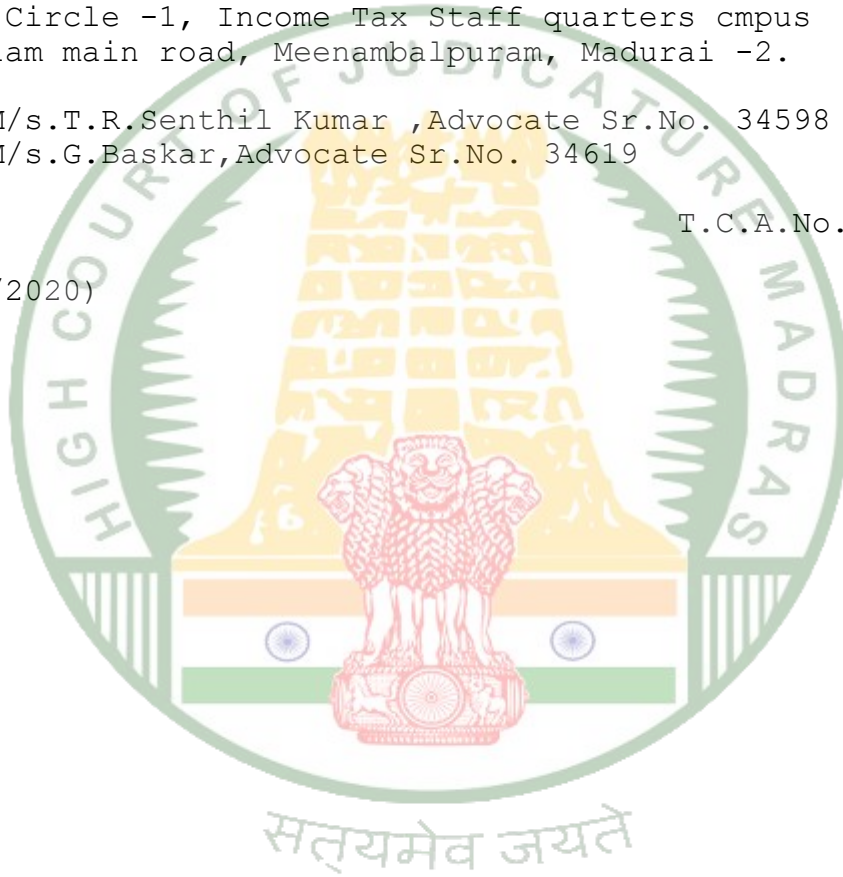
3.The Assistant Commissioner of Income Tax,
Central Circle -1, Income Tax Staff quarters campus
kulamangalam main road, Meenambalpuram, Madurai -2.

+1 cc to M/s.T.R.Senthil Kumar ,Advocate Sr.No. 34598

+1 cc to M/s.G.Baskar,Advocate Sr.No. 34619

T.C.A.No.372 of 2020

RSV(CO)
RMP(24/11/2020)



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