IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

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

Tax Case Appeal Nos.306 & 307 of 2018
& CMP.No.6114 of 2018

M/s.Spero Foundation Pvt. Ltd., Chennai-18 ...Appellant in both appeals

Vs

The Deputy Commissioner of Income Tax, Corporate Ward 6(2), Chennai-34 ...Respondent in both appeals

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 04.9.2017 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.Nos.1189 and 1572/Mds/2016 for the assessment year 2011-12 against the order of the Commissioner of Income Tax (Appeals)-15, Chennai -34, order dated 08/03/2016 made in ITA.No./14/CIT (A)-15/14-15 and against the Order of the Deputy Commissioner of Income Tax, Company Circle VI (4), Chennai, order dated 28/03/2014 made in PAN.No. AAACU1229L for the assessment Year 2010-2011.

For Appellant: Ms.Sriranjani for Mr.G.Baskar

For Respondent: Mr.J.Narayanasamy, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the common order dated 04.9.2017 made in I.T.A.Nos.1189 and 1572/ Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2011-12.

2. The assessee has filed these appeals by raising the following substantial questions of law:

"TCA.No.306 of 2018 :

i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was perverse in upholding that disallowance of expenditure as relatable to rental income without appreciating that the expenditure has no nexus to the rental income, but relates to the newly started service apartment business during the year, income on which was declared under the head 'business income'?

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that expenditure incurred for the purpose of service apartment business, income from which was assessed as business income should be allowed under Section 37 of the Income Tax Act, 1961 ? and

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the disallowance of expenditure made on proportionate basis to the rental income even though the appellant had service apartment business, income from which was assessed as business income ?

TCA.No.307 of 2018 :

i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding the claim of expenditure by the appellant is subject to disallowance under the provisions of Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 ?

ii. Whether the disallowance under the provisions of Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 can exceed the exempt income earned during the year ?

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the disallowance under Section 14A of the Income Tax Act, 1961 since the disallowance of 96% of the expenditure towards the personnel and administrative as relatable to income from house property is upheld, the disallowance once again under

Section 14A would amount to double disallowance i.e once under Section 24 of the Act and again under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962?

iv. Whether the provisions of Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 would be attracted even if there is no expenditure incurred in connection with exempt income earned from the investments made out of own source of funds?”

3. We have heard Ms.Sriranjani, learned counsel appearing for the appellant/assessee and Mr.J.Narayanasamy, learned Senior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel on behalf of the appellant/assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 06.12.2020 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 applications/declarations 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 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 applications to be filed for condonation of delay in restoration of the appeals and on such request made by the assessee by filing miscellaneous petitions for restoration, the Registry shall place such petitions before the appropriate Division Bench for orders.

6. The tax case appeals stand disposed of with the aforementioned liberty. Consequently, the substantial questions of law raised are left open. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax,
Corporate Ward 6(2),
Chennai-34.

3.The Commissioner of Income Tax (Appeals)-15,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

4.The Deputy Commissioner of Income Tax,
Company Circle VI-4, Chennai.

RS

TCA.Nos.306 & 307 of 2018
and CMP.No.6114 of 2018

CP(CO)
GN(21/12/2020)