IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.11.2020
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
Tax Case Appeal No.345 of 2018 & CMP.No.6564 of 2018

M/s.Sundaram Fasteners Ltd.,
Chennai-4 ...Appellant

Vs

The Assistant Commissioner of Income Tax, Company Circle VI(4), now Corporate Circle 6(2), Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 26.4.2017 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai made in I.T.A.No.590/Mds/2012 for the assessment year 2004-05.

TCA.No.345 of 2018:This Appeal filed against the Common order of the Income Tax Appellate Tribunal D Bench Chennai dated 26/04/2017 in ITA.No.590 Mds/2012 in PAN.No.AAACS8779D in Assessment year 2004-2005 against the Commissioner of Income Tax Appeals VI No.121, Mahatma Gandhi Road Chennai 600 034 in ITA.No.454/10-11 dated 23/12/2011 in PA.No.AAACS8779D in Assessment year 2004-2005 against the Assistant Commissioner of Income Tax Company Circle VI(4) Chennai in ITA.No.157/07-08, dated 07/02/2008 in PAN.No.AAACS8779D in Assessment year 2004-2005.

For Appellant: Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyer Padmanabhan
For Respondent: Mr.J.Narayanasamy, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 26.4.2017 made in I.T.A.No.590/Mds/2012 on the file of the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) for the assessment year 2004-05.

2. The assessee preferred this appeal by raising the following substantial questions of law:

"i. Whether the Tribunal was right in law in holding that the penalty under Section 271(1)(c) of the Act is leviable on the entire claim of depreciation on the hardening and tempering furnace which was kept ready for use in the relevant assessment year ?

ii. Whether the Tribunal was right in law in not appreciating that the appellant's claim of depreciation was not made on a fictitious asset and further, it is not the case where a claim of depreciation was made on expenditure which was found to be bogus or not genuine ?

iii. Whether the claim of depreciation made in the return of income and all the material facts relevant thereto has been furnished, the disallowance of such claim of depreciation will automatically lead to the conclusion that there was concealment of particulars of income or furnishing inaccurate particulars thereof ? And

iv. Whether the Tribunal was right in law in sustaining the levy of penalty under Section 271(1)(c) of the Act without appreciating that the appellant has produced all material facts relating to the claim of depreciation viz cost, date of addition, supplier's name, invoice copy, bill of entry, etc., during the course of assessment and the same is not in dispute?"

3. We have heard Mr.R.Vijayaraghavan,, learned counsel appearing on behalf of 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 appellant/assessee already filed the declaration/ undertaking under the Vivad Se Vishwas Scheme on 03.9.2020 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 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 and Consequently, the substantial questions of law are left open. No costs. Consequently, the connected CMP is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal,
'D' Bench, Chennai.
2.The Assistant Commissioner of Income Tax, Company Circle VI(4), now Corporate Circle 6(2), Chennai-34.

3.The Commissioner of Income Tax Appeals-V
No.121, Mahatma Gandhi Road
Chennai-600 034

4.The Joint Commissioner of Income Tax,
Company Range VI Chennai

Copy to
1.The Registrar Judicial
High Court Madras-104

2.The Section Officer
Judicial Department High Court Madras-104

+1 cc to M/s.Subbaraya Advocate sr 35597
+1 cc to M/s.J.Narayanasamy Advocate sr36023

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CMP.No.6564 of 2018

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