IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
T.C.A.Nos.700 to 702 of 2018

M/s.Sodecia India Pvt Ltd.,
Formerly Known as
M/s.Automotive Ancillary Services P Ltd.,
Tapalmedu, Pukkathurai,
Mathuranthangam Taluk,
Kancheepuram District - 603 308
PAN:AAACA7391P .. Appellant in all TCAs

Versus

The Deputy Commissioner of Income Tax,
Company Circle - I(1)
Chennai. .. Respondent in all TCAs

Common Prayer:- Tax Case Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 16.03.2016 made in I.T.A.Nos.1959, 1960 & 1961/Mds/2014 relating to the Assessment Years 2006-07, 2007-08 & 2008-09 respectively. Appeal filed against the common order of the Commissioner of Income Tax (A)(C)-II, Chennai-34 dated 23.01.2014 made in ITA.Nos.312,314 and 317/13-14, against the orders of the Deputy Commissioner of Income Tax, Company Circle(1), Chennai, dated 24.12.2008, 30.09.2009 and 27.12.2010 for the Assessment years 2006-2007, 2007-2008 and 2008-2009 respectively made in PAN GIR.No.AAACA7391P/AX2-043.

For Appellant : Mr.A.S.Sriram
[in all TCAs]

For Respondent :Mr.T.Ravikumar
Senior Standing counsel
[in all TCAs]

COMMON JUDGMENT

[Order of the Court was made 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 16.03.2016 passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) in I.T.A.Nos.1959, 1960 & 1961/Mds/2014 for the Assessment Years 2006-07, 2007-08 & 2008-09 respectively. The appeals were admitted on 12.11.2018 on the following Substantial Questions of Law:

> "i. When once the eligible business of the assessee is given, the benefit of deduction under Section 80IB of the Act on the assessee satisfying the conditions mentioned in Sub-Section(2) of the said Section 80IB of the Act, can the assessee be denied the benefit of the deduction on the ground that during the said 10 consequent years, it ceases to be a small scale industry? And
>
> ii. Whether the Appellate Tribunal is correct in law in approving the testing of the status of the eligible unit/undertaking as a small scale industrial undertaking in the assessment years under consideration even after satisfying such status in the initial assessment year comprised in the eligible block of 10 assessment years which condition was not required to be tested statutorily on year to year basis?"

2. We have heard Mr.A.S.Sriraman, learned counsel appearing for the appellant/assessee and Mr.T.Ravikumar, learned Senior Standing counsel for the respondent/Revenue.

3. It is a submitted by the learned Senior Standing counsel for the respondent that the Substantial Questions of Law raised for consideration have been answered against the assessee by the Hon'ble Supreme Court of India in the case of Deputy Commissioner of Income Tax Vs. M/s.Ace Multi Axes Systems Limited, [2018 400 ITR 0041 (SC)].

4. Thus, by applying the decision, We have to necessarily answer the Substantial Questions of Law against the assessee. However, 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 and requested

the appeal to be disposed of by issuing appropriate directions as done in other cases.

5. 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.

6. 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.

7. 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.

8. As observed, the assessee is given liberty to restore these appeals 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 applications to be filed for condonation of delay in restoration of these appeals and on such request made by the assessee by filing a Miscellaneous Petitions for Restoration, the Registry shall place such petition before the Division Bench for orders.

9. In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 09.11.2020 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.

10. With this direction, the Tax Case Appeals stand 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

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To

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

2.The Commissioner of Income Tax(A)(C)-B
Chennai-34

3.The Deputy Commissioner of Income Tax,
Company Circle(1)
Chennai

+1 cc to M/s.T.Ravikumar Advocate sr34000

T.C.A.Nos.700 to 702 of 2018

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