IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

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

T.C.A.No.73 of 2018

Mr.Mukundan Vijayan ..Appellant

Versus

The Income Tax Officer,
Corporate Ward 1 (1)
Chennai – 34. ..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, Madras 'D' Bench, dated 22.11.2017 made in I.T.A.No.639/MDS/2017 relating to the Assessment Year 2007-08. Appeal the order dated 13.01.2017 made in ITA 143/CIT(A)-1/15-16 on the file of the Commissioner of Income Tax (Appeals)-1 Chennai for the assessment year 2007-2008.

Appeal against the order dated 25.03.2015 made in PAN NO.AAOPM6199G on the file of the Income Tax Officer Corporate Ward-1(1) Chennai for the assessment year 2007-2008.

For Appellant : Mr.Suhrith Parthasarathy
For Respondent : Mr.T.Ravikumar
Senior Standing counsel
and
M/s.R.Hemalatha
Senior Standing counsel

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), is directed against the order dated 22.11.2017 passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.639/MDS/2017 for the Assessment Year 2007-08. The appeal was admitted on 30.01.2018 on the following Substantial Questions of Law:

"1. Whether the provisions of Section 2(22)(e) of the Income Tax Act, 1961, can be attracted in the absence of any amount being transferred from a company to its shareholder?

2. Whether, in the absence of any actual amount being transferred from a company to its shareholder, a mere entry in the books of such company can constitute payment by way of advance or loan within the meaning of Section 2(22)(e) of the Income Tax Act, 1961?

3. Whether an entry made in the books of a company, in and of itself, can constitute payment of dividend to a shareholder within the meaning of Section 2(22)(e) of the Income Tax Act, 1961?

4. Whether an admission by a company that no actual loan was extended to its shareholder ought to negate a finding that a payment was made within the meaning of Section 2(22)(e) of the Income Tax Act, 1961 by the company to such a shareholder?"

2. We have heard Mr.Suhrith Parthasarathy, learned counsel appearing for the appellant and Mr.T.Ravikumar, learned Senior Standing counsel and M/s.R.Hemalatha, learned Senior Standing counsel for the respondents.

3. 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.

4. 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.

5. 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.

6. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the declaration under Section 4 of the Act on 25.09.2020 and has also remitted the tax in terms of the computation to be done under the said Act and they are awaiting the orders from the Department.

7. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the assessee. Accordingly, the Tax Case Appeal stands disposed of on the ground that the assessee has already filed a declaration and remitted the tax and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration 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. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax(Appeals)-1,
Chennai.

3.The Income Tax Officer,
Corporate Ward-1(1), Chennai.

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.34004

RSV(CO)
RV(19/11/2020)