IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

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

T.C.A.No.93 of 2018

M/s Virgo Properties Pvt., Ltd.,
New No.5, Old No.3,
Plaza House, Thirumurthy Street,
T.Nagar, Chennai - 600 017 ..Appellant

Versus

The Assistant Commissioner of Income Tax,
Corporate Circle 3(2)
Chennai - 600 034 ..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 'A' Bench, Chennai made in I.T.A.No.1208/MDS/2017 dated 31.07.2017 relating to the Assessment Year 2011-2012. Appeal against the order passed by the Commissioner of Income Tax, (Appeals)-II, Chennai-600 034, dated 27.03.2017 made in ITA NO.234/2015-16/CIT(A)-II for the Assessment year 2011-12 against the order of assessment dated 19.03.2014 with PAN NO.AABCU9182A.

For Appellant : Mr.A.S.Sriraman
For Respondent : Mrs.V.Pushpa

J U D G M E N T
[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the Appellant/Assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 13.07.2017 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1208/Mds/2017 for the Assessment Year 2011-2012. This appeal was admitted on 06.06.2018 on the following Substantial Questions of Law:

> “Whether the Income Tax Authorities substantially erred in law in interpretation of the scope of Section 115 JB of the Income Tax Act in enhancing book profits for taxation in rectification proceedings initiated

and completed under Section 154 of the Income Tax Act, 1961?"

2. We have heard Mr.A.S.Sriraman, learned counsel appearing for the Appellant/assessee and Mrs.V.Pushpa, learned counsel for the respondent / revenue.

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 28.08.2020.

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 these appeals 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 stand disposed of on the ground that the assessee has already filed a declaration 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 these 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 appeals 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 and Consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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

2. The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
Chennai-600 034.

3. The Commissioner of Income Tax,
(Appeals)-II,Chennai-600 034.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.41612

T.C.A.No.93 of 2018

cb(CO)
rv(05/02/2021)