IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

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

Tax Case Appeal No.528 of 2019

M/s.Tamilnadu Civil Supplies
Corporation Ltd., Chennai-10 ...Appellant/Appellant

Vs

The Income Tax Officer, Non
Corporate Circle 10(5),
Chennai-34 ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 25.2.2019 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.1116/Chny/2017 for the assessment year 2013-14 against the order passed by the Commissioner of Income Tax (Appeals)-12, 121, Mahathma Gandhi Road, Chennai 600 034 made in I.T.A.No.126/CIT(A)-12/2015-2016 dated 28.02.2017.

against the order passed by the Income Tax officer, Non Corporate Ward-10(5), 121 Uthamar Gandhi Salai, Chennai 34 made in PAN/GIR No. AABCT0551H date of order 18.02.2016 for the Assessment year 2013-2014.

For Appellant : Mr.A.S.Sriraman
For Respondent: Mr.M.Swaminathan, SSC assisted
by Ms.V.Pushpa, JSC

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 25.2.2019 made in I.T.A.No.1116/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2013-14.

2. The appeal was admitted on 05.8.2019 on the following substantial questions of law :

> "i. Whether the provisions of Section 43B(f) of the Act is constitutionally valid in view of lack of reasons shown for inserting the said provisions in the Statute

to overcome the law declared by the Apex Court in the case of M/s.Bharath Earth Movers Ltd. ?

ii. Whether the Appellate Tribunal is correct in not following the only decision available on the validity of the provisions in Section 43B(f) of the Act rendered by the Calcutta High Court despite the interim orders passed by the Apex Court in relation thereto? And

iii. Whether the claim of deduction of the provision for leave encashment made in the computation of taxable total income by the appellant is proper and justified?"

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Ms.V.Pushpa, learned Junior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel on behalf of the assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and orders were passed on 09.12.2020 in Form No.3.

5. In the light of the subsequent event, the assessee is given liberty to restore this appeal in the event the ultimate decision 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 appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty. Consequently, the substantial questions of law framed are left open. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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

2.The Income Tax Officer, Non Corporate Circle 10(5), Chennai-34

3.The Commissioner of Income Tax (Appeals)-12
121, Mahathma Gandhi Road
Chennai 600 034.

+1 CC to Mr.M.Swaminathan, Advocate sr 42339.

AK(CO)
SP(20/01/2021)