IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.No.641 of 2019

Chokkalingam Sudhakar ..Appellant/Appellant

Versus

The Deputy Commissioner of Income Tax,
Non-Corporate Ward 18(1)
Chennai - 34 ..Respondent/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 'B' Bench, Chennai, dated 21.03.2019 made in ITA No.1834/Chny/2018 relating to the Assessment Year 2012-2013 and against the Order of the Commissioner of Income Tax (Appeals)-15, Chennai -34, and made in ITA No.233/2014-2015 CIT(A)-15, dated 30.01.2018, and against the order of the Deputy Commissioner of Income Tax, Non corporate circle-18, Chennai-34, and made in PAN NO.ALDPS0339N, dated 11.02.2015 in the Assessment year 2012-2013.

For Appellant : Mr.P.V.Sudhakar

For Respondent : Mr.S.Rajesh

JUDGMENT

[Judgment 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), challenging the order dated 21.03.2019 passed by the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) in I.T.A.No.1834/Chny/2018 for the Assessment Year 2012-2013. The appeal was admitted on 30.08.2019 on the following Substantial Questions of Law for consideration:

> "(i) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the appellant has failed to comply with Section 54F(4) of the Income Tax Act and thereby disentitled

to claim exemption under Section 54F of the Income Tax Act?

(ii) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in concluding that the appellant had failed to prove investment of the sale proceeds in the construction of a new house?

(iii) Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in its finding that in the absence of any record to show that the appellant is the co-owner of the new house along with his wife, in whose name, the new house has been registered and constructed to conclude that the appellat is not entitled to the benefits under Section 54F of the Income Tax Act? and

(iv) Whether the assessement order dated 11.02.2015 passed by the respondent for the assessment year 2012-2013 is barred by limitation in view of the proviso to Section 153(1) of the Income Tax Act?

2. We have heard Mr.P.V.Sudhakar, learned counsel appearing for the appellant/assessee and Mr.S.Rajesh, learned counsel for the respondent/Revenue.

3. 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.

4. 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.

5. 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.

6. 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.

7. As observed, 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 Division Bench for orders.

8. In the light of the above, We direct the appellant / assessee to file the Form No.I not later than 21.12.2020 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.

9. With this direction, 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

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax,
   (Appeals)-15, Chennai-600034.

3. The Deputy Commissioner of Income Tax,
   Non Corporate circle-18(1), Chennai-600034.

NRJK(CO)
RV(11/12/2020)