IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

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

T.C.A.Nos.1005 & 1006 of 2019

The Commissioner of Income Tax,
Chennai. ..Appellant in both T.C.As

Versus

M/s.CSS Corp Pvt Ltd
6th Floor, Ambit IT Park,
No.32A & B, Ambit Road
Ambattur Industrial Estate
Chennai – 600 058
PAN:AAECS2087A ..Respondent in both T.C.As

Common 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 made in I.T.A.No.2967/Chny/2018 and I.T.A.No.2968/Chny/2018 dated 27.06.2019 relating to the Assessment Years 2004-05 and 2005-06 respectively, and against the order dated 31.07.2018 made in ITA No. New No.84, 86 & 83/CIT(A)-I/2009-10, 2008-09 & 2009-10 passed by the Commissioner of Income Tax (Appeals)-1, Chennai and against the order dated 21.7.2009 and 30.12.2008 passed by the Assistant Commissioner of Income Tax, Company Circle-I(3), Chennai-34, for the assessment year 2004-05 and 2005-06 respectively.

For Appellant : M/s.Hemalatha
[in both T.C.As]
For Respondent : Mr.R.Sandeep Begmar
[in both T.C.As]

COMMON JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

These appeals have been filed by the appellant/Revenue under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 27.06.2019 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.2967/Chny/2018 and

I.T.A.No.2968/Chny/2018 for the Assessment Years 2004-05 and 2005-06 respectively. These appeals were admitted on 09.12.2019 on the following Substantial Questions of Law:

> "1.Whether on the facts and in the circumstances of the case, the Tribunal ought to have applied the ratio of the Hon'ble Apex Court decision in the case of Himatasingike Seide reported in 48 Taxmann.com page 357 where it had held that depreciation loss of Section 10A/10B unit cannot be set off against the other income?
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> (ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that deduction u/s.10A and 10B is to be allowed without considering the carry forward loss especially when it was held in the decision relied in the case of Yokogawa India Limited that the deduction u/s.10A and 10B is to be allowed while computing gross total income of eligible undertaking under Chapter-IV of the Income Tax Act?"

2. We have heard M/s.Hemalatha, learned counsel appearing for the appellant/Revenue and Mr.R.Sandeep Begamar, learned counsel for the respondent/assessee.

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 respondent/assessee that the assessee has already filed the declarations under Section 4 of the Act on 12.05.2020.

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 Appeals 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 appeals in the event the ultimate decision to be taken on the declarations 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 Appeals stand disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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

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

3. The Assistant Commissioner of Income Tax,
   Company Circle-I(3), Chennai-34

Copy to the Assistant Registrar, AE (Main) Section,
High Court, Madras.

+2cc to M/s.Sandeep Bagmer, Advocate, Sr.No.35758 & 35751

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rr ii (03/12/2020)