IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
W.A.No.4223 of 2019
and
C.M.P.No.26286 of 2019

1.The Principal Commissioner of Income Tax
Room No.701, VII Floor
New Block, 121, Nungambakkam High Road
Chennai - 600 034.

2.The Chief Commissioner of Income Tax - 1
121, Nungambakkam High Road
Chennai - 600 034

3.The Income Tax Officer [I/C]
Non-Corporate Ward 2(5)
121, Nungambakkam High Road
Chennai - 600 034 .. Appellants

Versus

A.S.Manjunath Sadasivam
Legal Heir of Late Pushparani
Old No.23, New No.51,
North Boag Road, T.Nagar,
Chennai - 600 017. .. Respondent

PRAYER:-Writ Appeal filed under Clause 15 of the Letter Patents against the order dated 09.08.2019 passed in W.P.No.9148 of 2017 on the file of this Court.

Prayer in WP.No. 9148 of 2017 : Writ Petition praying to the nature of a Writ of Certiorarified Mandamus to call for the records of the impugned order in C.No.217/11/PCIT-1/2015-16 dated 14.1.2016 passed by the 1st respondent and quash the and direct the 1st respondent to consider the plea of the petitioner for the proper computation of capital gains tax in the fact and circumstances of the case.

For Appellants : M/s.Hema Muralikrishnan
For Respondent : Mr.V.S.Jayakumar

JUDGMENT

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

This appeal has been filed by the Revenue under Section 15 of Letter Patents Act ('the Act' for brevity), against the order passed by this Court in W.P.No.9148 of 2017 dated 09.08.2019.

2. We have heard M/s.Hema Muralikrishnan, learned counsel appearing for the appellants/Revenue and Mr.V.S.Jayakumar, learned counsel for the respondent/assessee.

3. 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 respondent / 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 that the respondent / assessee has already filed the declaration under Section 4 of the Income Tax Act on 09.11.2020.

7. In the light of the fact that the respondent / 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 respondent in the event the order to be passed by the Department under the Income Tax Act is not in favour of the respondent. Accordingly, the Writ Appeal stands disposed of on the ground that the respondent 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 respondent at the earliest. As observed, the respondent / assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the respondent under Section 4 of the Income Tax Act is not in favour of the respondent. 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 respondent by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. With this observation, the Writ Appeal stands disposed of with the aforementioned liberty. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 36578
+1cc to Mr.Jayakumar, Advocate, S.R.No. 36524

MG(CO)
GN(29/12/2020)