IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

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

Tax Case Appeal No.976 of 2018

The Commissioner of Income Tax, Chennai. ...Appellant/Respondent

Vs

M/s.Original Kerala Jewellers, Chennai-17 ...Respondent/Petitioner

APPEAL under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 05.3.2018 made in I.T.A.Nos.2987 & 2988/Chny/2017 for the assessment year 2008-2009 and 2010-11 and against the order of the Commissioner of Income Tax (Appeals)-2 Chennai dated 29.09.2017 made in I.T.A.Nos.204, 205 and 206/CIT (A)-2/2016-2017 for the Assessment year 2007-2008, 2008-2009, 2010-2011 against the order the Deputy Commissioner of Income Tax, Non Corporate Circle-2, Chennai 600 034 dated 09.01.2017 made in PANIAAAF00104F for the Assessment year 2010-2011.

For Appellant : Mrs.R.Hemalatha, SSC
For Respondent : Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyer Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 05.3.2018 made in I.T.A.No.2988/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) for the assessment year 2010-11.

2. The appeal was admitted on 21.12.2018 on the following substantials question of law:

> "i. Whether the Tribunal was right in setting aside the order of penalty issued under Section 271(1)(c) especially when the assessee has not offered any explanation satisfactorily to the Assessing Officer ?

ii. Whether Explanation (1) would come into play once no explanation is offered by the assessee and therefore, penalty become leviable? And

iii. Whether the Tribunal was right in allowing the assessee to raise the plea of defective notice issued under Section 274 read with Section 271 of the said Act for the first time before the Tribunal and having not done before the Commissioner, whether at all the assessee was prejudiced on account of the said alleged defect?”

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.R.Vijayaraghavan, learned counsel appearing on behalf of the respondent/assessee.

4. The learned counsel for the respondent/assessee, on instructions, submits that the 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. In the light of the above, we direct the respondent/assessee to file Form No.I on or before 28.12.2020 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.

10. 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Income Tax Appellate Tribunal, 'C' Bench, Chennai.

2.The Commissioner of Income Tax (Appeals)-2
Chennai 600 034.

3.The Deputy Commissioner of Income Tax
Non Corporate Circle-2
Chennai 600 034.

+1 CC to Mr.T. Ravikumar, Advocate sr 39480.
+1 CC to Mr. Subbaraya Aiyar, Advocate sr 39487.

T.C.A.No.976 of 2018

NR(CO)
SP(19/01/2021)