IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

Tax Case Appeal No.240 of 2021

M/s.Gee Gee Holdings P. Ltd.,
Old No.31, New No.6,
Dr.Radhakrishnan Salai 9th Street,
Mylapore, Chennai - 600 004. ... Appellant

Vs.

The Income Tax Officer,
Company Ward - II (1),
Chennai. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 12.01.2018 passed in M.P.No.153/Mds/2017 (I.T.A.No.775/Chny/2013) for the assessment year 2008-09, preferred against the order passed by the Commissioner of Income Tax(Appeals)-I, Coimbatore dated 07.01.2013 made in Appeal No.569/10-11 preferred against the order passed by the Assistant Commissioner of Income Tax, Company Circle-II(2), Chennai, dated 16.12.2010 for the assessment year 2008-09.

For Appellant : Mr.M.Kaushik
for Mr.S.Sridhar

For Respondent : Mr.Karthick Ranganathan,
Senior Standing Counsel

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J U D G M E N T
(Delivered by M.DURAISWAMY, J.)

The appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 12.01.2018 passed by the Income Tax Appellate Tribunal "B" Bench, Chennai ('the Tribunal' for brevity) in M.P.No.153/Mds/2017 (I.T.A.No.775/Chny/2013) for the assessment year 2008-09.

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2.The appellant has raised the following Substantial Questions of Law in the grounds of appeal:

> "1)Whether the provisions of Section 254(2) of the Income Tax Act, 1961 envisage the power for the Income Tax Appellate Tribunal to recall their earlier order despite the power vested therein is limited to correcting the mistake apparent from record?
>
> 2)Whether the recall of the earlier order dated 26.05.2016 in the impugned order dated 12.01.2018 on the presumption of non-consideration of two issues which according to the appellant established perversity in view of the absence of specific grounds of appeal in the statutory Form No.36 filed by the Revenue before the Income Tax Appellate Tribunal?
>
> 3)Whether the Appellate Tribunal was right in entertaining the issue of assessment of Rs.75,00,000/- despite the absence of ground of appeal forming part of the statutory Form No.36 filed by the Revenue and accepted by the departmental representative during the course of the hearing of the appeal on 01.10.2019 in view of the challenge of the recall order dated 12.01.2018 in the present appeal?
>
> 4)Whether the Appellate Tribunal was within its jurisdiction in adjudicating an issue on merits despite an endorsement given by the Departmental representative for not raising a ground on an issue in the capacity of the appellant before them?
>
> 5)Whether the Appellate Tribunal was correct in accepting the stand of the respondent/the Assessing Officer in bringing to tax Rs.75,00,000/- being the part of the arbitration award amount which amount was arising from the arbitration award dated 08.04.2006 proving the sterilisation of source of income while fortifying the stand of the appellant Company on treating such sum as capital receipt in view of the challenge of the recall order dated 12.01.2018 in the present appeal?
>
> 6)Whether the Appellate Tribunal was right in holding that the income of Rs.75,00,000/- had accrued during the assessment year under consideration despite the accepted position of the arbitration award dated 08.04.2006 falling within the assessment year 2007-08 while overlooking law declared consistently by the Supreme Court on the principles of accrual accounting in view of the challenge of the recall order dated 12.01.2018 in the present appeal?

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7) Whether the Appellate Tribunal is correct in confirming the assessment of notional interest as part of the taxable total income pertaining to the belated receipt of arbitration award amount in defying the principles of real income theory in view of the challenge of the recall order dated 12.01.2018 in the present appeal?"

3.We have heard Mr.M.Kaushik, learned counsel for the appellant/ assessee and Mr.Karthick Ranganathan, learned Senior Standing Counsel for the respondent/Revenue.

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.We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form - 3 on 02.03.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

6.In view of the submission made by the learned counsel for the appellant, the Tax Case Appeal stands dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal, Madras "B" Bench

2. The Income Tax Officer,
   Company Ward - II (1),
   Chennai.

3. The Deputy Commissioner of Income Tax,
   Corporate Circle-2(1), Chennai

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4.The Commissioner of Income Tax(Appeals-I)
Coimbatore.

5.The Assistant Commissioner of Income Tax,
Company Circle-II(2),
Nungambakkam, Chennai 34

+1cc to Mr.S.Sridhar, Advocate, S.R.No.22350

PM(CO)
KM(29/04/2021)

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