IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

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

Tax Case Appeal No.245 of 2020

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

Vs.

Smt.Namita Fomra
C/o.Shri T.N.Seetharaman
Advocate, No.384 (Old No.196) Lloyds Road,
Chennai – 600 086. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" SMC Bench, dated 03.09.2019 passed in I.T.A.No.2924/Chny/2018, prefered against the order of the Commissioner of the Income Tax(Appeals)-5, Chennai order dated 07/08/2018 made in ITA.No.200/CIT(A)-5/2017-18 prefered against the order of the Income Tax Officer Non-Corporate Ward-5(2) Chennai order dated 14.12.2017, made in PAN:AADPF1305N for the Assessment year 2011-2012.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.R.Kumar

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

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 03.09.2019 passed by the Income Tax Appellate Tribunal, Chennai "A" SMC Bench, ('the Tribunal' for brevity) in I.T.A.No.2924/Chny/2018 for the assessment year 2011-12. The above appeal has been admitted on 28.08.2020 on the following Substantial Questions of Law:

"1.Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the well reasoned order passed by the Assessing Officer for re-examination especially when the Assessing Officer had considered all the material placed while passing the assessment order?

2.Whether, on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the Assessing Officer by quoting the decision in the case of Kanhailal & Sons (HUF) in ITA No.1849/Chny/2014 Sunil Kumar Lalwani and that Aashesh Kumar Lalwani wherein the onus has been shifted to the Revenue with a direction that the Assessing Office is to bring on record the role of the assssee in promoting the company and the relation of the assessee if any with that of the promoters and role of inflating of prices, etc. which exercise had already been done by the Assessing Officer and the SEBI? and

3.Is not the finding of the Tribunal perverse especially when the decision of the Tribunal is contrary to the time tested principle that the person who asserts a fact has to discharge the initial burden cast upon to show that the said facts are true and only thereafter the burden would shift to the Department?"

2. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Kumar, 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.Learned counsel for the respondent/assessee submitted that the assessee had availed the Vivad Se Vishwas Scheme and that the respondent/assessee had already been issued with Form-3 on 15.01.2021.

5.Since the respondent/assessee had been issued with Form-3, nothing survives for adjudication in the above appeal. Recording the submission made by the learned counsel for the respondent/assessee, the Tax Case Appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mkn

To

1.Income Tax Appellate Tribunal,
Chennai "A" SMC Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax Appeals(V),
Chennai.

4.The Income Tax Officer
Non-Corporate Ward 5(2), Chennai.

+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.23486

Tax Case Appeal No.245 of 2020

AJB(CO)
CB(18/06/2021)