IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V. THAMILSELVI

Tax Case Appeal No.1009 of 2007

M/s. Hindustan Powerplus Ltd.,
NO.6B, G.S.T. Road,
St. Thomas Mount,
Chennai. ... Appellant

v.

The Deputy Commissioner of Income Tax,
Company Circle- II(2),
Chennai - 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 31.01.2007 passed in I.T.A.Nos.920 to 922 /Mds/ 2005 for the assessment years 1997-98, 1998-99 and 1999-2000.

For Appellant : Mr. S.P.Chidambaram

For Respondent : Mr.T. Ravikumar
Standing Counsel

<u>J U D G M E N T</u>

(Judgment was Delivered by M. DURAISWAMY, J)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the common order dated 31.01.2007 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.Nos.920 to 922 /Mds/ 2005 for the assessment years 1997-98, 1998-99 and 1999-2000.

2. The appeal was admitted on 09.07.2007 on the following Substantial Questions of Law:

" (i) Whether the Tribunal was right in upholding the reassessment made under section 147 of the Act for the assessment year 97-98? and

(ii) Whether the Tribunal was right in holding that the unabsorbed depreciation is not available for set off while computing the income under section 115JA of the Income Tax Act?"

3. We have heard Mr. S.P.Chidambaram, learned counsel for the appellant and Mr.T. Ravikumar, learned Standing Counsel for the respondent.

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.

4. We are informed by the learned counsel for the appellant/assessee

that the assessee has already filed the requisite Forms 1 and 2 on 29.01.2021 under Section 4 of the Act.

5. 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 this appeal 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 Appeal stands disposed of on the ground that the assessee has already filed requisite Forms 1 and 2 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 this appeal in the event the ultimate decision to be taken on the declaration 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.

6. With these observations, the Tax Case Appeal stands disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

(M.D.,J.) (T.V.T.S.,J.)
01.02.2021

Index : Yes/No
Internet : Yes
Rj

To

1. The Income Tax Appellate Tribunal,
   Madras 'A' Bench, Chennai,

2. The Deputy Commissioner of Income Tax,
   Company Circle- II(2),
   Chennai - 600 034.

M. DURAISWAMY, J.
and
T.V. THAMILSELVI, J.

Rj

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