IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.1138 of 2008

M/s.M.Ct.M. Global Investments
Private Ltd.,
761, Anna Salai,
Chennai – 600 002. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle – IV(1),
121, Nungambakkam High Road,
Chennai – 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 19.12.2007 passed in I.T.A.No.659/Mds/2005.

For Appellant : Ms.Sri Niranjani Srinivasan
for M/s.G.Baskar

For Respondent : Mr.R.Karthick Ranganathan
Senior Standing Counsel
and Mr.S.Rajesh
Standing Counsel

J U D G M E N T

(Judgment was delivered by **T.S. SIVAGNANAM, J.**)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 19.12.2007 passed by the Income Tax Appellate Tribunal, Madras "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.659/Mds/2005 for the assessment year 2000-01. The appellant/assessee has raised the following substantial questions of law in the above appeal :

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the proceedings under Section 147 of the Income Tax are valid?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal ought not to have held that the reopening of the assessment is without jurisdiction and consequently the order under Section 147 of the Income Tax Act is liable to be set aside?

3.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income derived by the appellant in Malaysia is liable to be assessed in India?

4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the appellant's claim that the income derived in Malaysia constitutes "business income" and is hence not liable to tax in India?"

2. We have heard Ms.Sri Niranjani Srinivasan, learned counsel appearing for the appellant/ assessee and Mr.R.Karthick Ranganathan, learned Senior Standing Counsel and Mr.S.Rajesh, learned Standing Counsel for the respondent/Revenue.

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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 01.02.2021.

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 the appeal pending. At the same time, 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, is to be safeguarded. Accordingly, the Tax Case Appeal is dismissed on the ground that the assessee has already been issued with

Form-3 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 the 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 this observation, these Tax Case Appeal stands dismissed with the aforementioned liberty, and consequently, the Substantial Questions of Law are left open. No costs.

(T.S.S., J.) **(S.S.K., J.)**
16.08.2021
(1/3)

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Internet : Yes
Index : Yes / No

To

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

2.The Assistant Commissioner of Income Tax,
Company Circle – IV(1),
121, Nungambakkam High Road,
Chennai – 600 034.

T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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