IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM

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

Tax Case Appeal No.1480 of 2008

M/s.P.S.Apparals,
No.15, Race Course Road,
Guindy,
Chennai – 600 032. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Business Circle-IV,
Chennai. ... 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 16.11.2007 passed in I.T.A.No.1421/Mds/2006.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
and Mrs.V.Pushpa
Standing Counsel

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 16.11.2007, passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1421/Mds/2006 for the Assessment Year 2003-04. The above appeal was admitted on 19.09.2008 on the following Substantial Questions of Law:

> *"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the deduction u/s.80HHC has to be computed on the profits of the business after reducing the deduction allowed u/s.80IA of the Income Tax Act, 1961?*
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> *2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not appreciating that the deduction u/s.80HHC must be allowed first and then the deduction u/s.80IA of Income Tax Act, 1961?"*

2. We have heard Mr.M.P.Senthil Kumar, learned counsel for the appellant/ assessee and Mr.M.Swaminathan, learned Senior Standing Counsel

and Mrs.V.Pushpa, 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 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 & 2 on 26.12.2020 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 the 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 the requisite Forms 1 & 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 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, 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.] **[R.H., J.]**
29.04.2021

Index : Yes/No
Internet : Yes
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To

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

2.The Assistant Commissioner of Income Tax,
Business Circle-IV,
Chennai.

M. DURAISWAMY, J.
and
R. HEMALATHA, J.

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