IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

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

Tax Case Appeal No.1093 of 2009

Shri R.Yoogamoorthy
No.9, Mandirappa Street,
New Siddhapudhur,
Coimbatore - 641 044. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Central Circle - IV,
No.67-A, Race Course Road,
Coimbatore. ... Respondent

Tax Case Appeal filed against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A', dated 27/02/2009 in I.T.(SS)A.No.28/mds/2007 against the Commissioner of Income Tax (Appeals)-II, Coimbatore dated 30/11/2006 in I.T.Appeal No.370C/05-06 against the order passed by the Assistant Commissioner of Income Tax, Central Circle -IV, Coimbatore in PAN.No.AAJPY0909P dated 20/02/2006 in Assessment year 01/04/199 to 23/01/2001.

For Appellant : Mr.K.Magesh
for M/s.G.RM.Palaniappan

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel
and Mrs.K.G.Usha Rani
Standing Counsel

J U D G M E N T

(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 order dated 27.02.2009 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, ('the Tribunal' for brevity) in I.T.(SS)A No.28/Mds/2007 for the Block Period ending 23.01.2001. The above appeal has been admitted on 27.10.2009 on the following Substantial Questions of Law:

*"1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal has failed to see that the provisions do not provide for limitation for*

*initiation of proceedings under Section 158BD of the Act and thus ought to be initiated within a reasonable period and thus the impugned proceeding initiated after nearly 3 years from the date of inspection of Mr.R.Vellingiri is barred by limitation and thus a nullity?*

*2.Whether on the facts and in the circumstances of the case, the order of the Appellate Tribunal based on mere conjecture, surmises and self-serving statement thus stands vitiated?*

*3.Whether on the facts and in the circumstances of the case, the order of the Tribunal is contrary to the following rules of evidence?*

*a) One cannot be required to be proved the negative.*

*b) The burden is on the person making the assertion. Suspicion cannot take the place of proof concluding that the appellants had received Rs.13.00 lakhs in cash apart from Rs.14.00 lakhs paid by cheque."*

2. We have heard Mr.K.Magesh for M/s.G.RM.Palaniappan, learned counsel for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Mrs.K.G.Usha Rani, 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 03.03.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

5. 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

To

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

2.The Assistant Commissioner of Income Tax,
Central Circle - IV,
No.67-A, Race Course Road,
Coimbatore.

3.The Commissioner of Income Tax(Appeals)-II,
Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Senior Standing Counsel SR.NO..21066

+1cc to Mr.K.Magesh, Advocate SR.NO..20990

AKM/27.04.21/3P-6C/

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