

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM

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

Tax Case Appeal No.598 of 2008

M/s.Andal Thirumanakoodam,
34, North Road, West CIT Nagar,
Chennai – 600 035.

... Appellant

Vs.

The Income Tax Officer,
City Ward II, 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
"A" Bench, dated 20.07.2007 passed in I.T.A.No.1139/Mds/2001.

For Appellant : Mr.Sivaraman

For Respondent : Mr.M.Swaminathan,
Senior 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 20.07.2007 passed by the Income Tax Appellate Tribunal, Madras “B” Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1139/Mds/2001 for the Assessment Year 1997-98.

2.The above appeal was admitted on 28.04.2008 on the following Substantial Questions of Law for consideration:

“1)Whether the Tribunal is correct in law in concluding that the provisions of Section 45(4) of the Act was correctly applied by the respondent herein on the facts of the case inspite of the clause 5 of the Partnership Deed and provisions in Section 2(47) of the Act defining the term “transfer”?

2)Whether the Tribunal is correct in law in rejecting the claim of the appellant on the non-applicability of Section 45(4) of the Act in view of the claim of depreciation on the said property by the appellant and payment of interest on the capital account on the partners in the

computation of taxable total income even though such claims were admittedly made in view of use of the property by the appellant in his business as agreed upon between the partners at the time of formation and subsistence/

3)Whether the Tribunal is correct in law in rejecting the alternate prayer for the remand of the issues raised alternatively in assessing the capital gains as short term and on the valuation for the purpose of fixing the sale consideration to levy short term capital gains on the facts and in the circumstances of the case?

4)Whether the Tribunal is correct in not considering the prayer for refixing the appeal before them for further hearing as prayed for by the appellant herein vide their written submissions placed on record after completion of hearing and before the date of pronouncement of the order?

5)Whether the Tribunal was correct in ignoring the spirit and intent of Section 45(4) as introduced by Finance Bill, 1984 as spelt out in the memorandum explaining the provisions of the said bill, as part of the budget speech of the Minister of Finance, followed by the explanatory notes to the Finance Act, 1984 to the effect that the provisions have been introduced only to prevent the device to avoid tax on transfer of assets through the medium of a firm, whereas the case of the assessee there has been no transfer of asset

from one person to another or from one group of persons to another group but by the partners to themselves, as they were the same as the time of formation and dissolution of the firm with the exception of a partner who died during the currency of the partnership?

6)Whether the Tribunal was correct in mechanically applying the provisions of Section 45(4) to the facts of the case though there is no circumstance or fact to show that there has been an attempt to avoid tax through the medium of partnership?”

3. We have heard Mr.Sivaraman, learned counsel for the appellant/ assessee and Mr.M.Swaminathan, learned Senior Standing Counsel for the respondent/ Revenue.

4. It may not be necessary for this Court to decide the Substantial Question 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.

5. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Forms 1 & 2 on 30.01.2021 under Section 4 of the Act.

6. 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 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 Forms 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.

7. 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.

Index : Yes/No
Internet : Yes
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[M.D., J.] [T.V.T.S., J.]
22.02.2021

To

1. Income Tax Appellate Tribunal, Madras "A" Bench
2. The Income Tax Officer,
City Ward II, Chennai.

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

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