IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM

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

Tax Case Appeal No.453 of 2009

Kurien E.Kalathil ... Appellant/Respondent

Vs.

The Assistant Commissioner of Income Tax,
Circle XIII, Chennai - 600 006. ... Respondent/Appellant

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 31.07.2008 passed in I.T.A.No.1854/Mds/2006. Against the order passed by the Commissioner of Income Tax (Appeals)-XII, 121, Mahathma Gandhi Road, Chennai-34, made in G.I.No./PA/No.AALPK3233A dated 31.03.2006 and against the order passed by the Commissioner of Income Tax(Appeals), Chennai made in P.A.No.AALPK3233A dated 31.08.2005 and against the order passed by the Assistant Commissioner of Income Tax, Circle XIII(I/c), Chennai-06, made in PA.No./GIR.No.61769-K, dated 28.03.2005.

For Appellant : Mr.Anish Kumar
For Respondent : Ms.S.Premalatha,
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 31.07.2008 passed by the Income Tax Appellate Tribunal, Madras “B” Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1854/Mds/2006 for the Assessment Year 2002-03. The above appeal was admitted on 06.07.2009 on the following Substantial Questions of Law for consideration:

"1)Whether on the facts and in the circumstances of the case and in the light of the certificate dated 31.12.2005 accepted in the evidence by the Commissioner (Appeals), there is any material or evidence on record for the Appellate Tribunal to hold that the appellant resumed contract work only with effect from 14.02.2003?

2)Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the appellant is not entitled to depreciation on machinery and other assets fr the assessment year in question?"

2. We have heard Mr.Anish Kumar, learned counsel for the appellant/ assessee and Ms.S.Premalatha, learned Standing Counsel for the respondent/ Revenue.

3. 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.

4. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Form - 1 on 31.01.2021 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 the requisite Form 1 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.

6. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the Substantial Question of Law is left open. No costs.

-Sd/-
Asst.Registrar (CS IV)

/true copy/
Sub Asst. Registrar

va

To

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

2.The Assistant Commissioner of Income Tax,
Circle XIII, Chennai - 600 006.

3.The Commissioner of Income Tax,(Appeals)XII,
121, Mahathma Gandhi Road, Chennai-34

4.The Commissioner of Income Tax(Appeals)
Chennai

+1 cc to Mr.R.Anishkumar advocate sr10566
+1 cc to Mr.M.Swaminathan Advocate sr10240

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