IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM

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

TAX CASE APPEAL NO.566 OF 2009

M/s.Tube Investments of India Ltd.,
'Dare House', 3rd Floor,
No.234, N.S.C. Bose Road,
Chennai - 600 001. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle - III(2),
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 "C" Bench, dated 01.01.2009 passed in I.T.A.No.12/Mds/2006.

Against the order of the Commissioner of Income Tax(A)-XI Chennai-34 in ITA.TR.No.266/04-05, ITA.No.212/04-05, dated 21.11.2005, for the Assesment year 2001-02 against the Order of the Assistant Commissioner of Income Tax, Company Circle III(2), Chennai-34, dated 31.03.2004.

For Appellant : Ms.G.Varsitha
for M/s.K.Vaitheeswaran

For Respondent : Mr.T.Ravikumar
Senior 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 01.01.2009, passed by the Income Tax

Appellate Tribunal, Madras "C" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.12/Mds/2006 for the Assessment Year 2001-02. The above appeal was admitted on 09.02.2010 on the following Substantial Questions of Law:

> "1.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the Excise duty has to be included in arriving at the domestic turnover while calculating the limit of domestic sales for the purpose of the second proviso to Section 10B(1) of the Income Tax Act, 1961 ?
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> 2.Whether on the facts and circumstances of the case, the Tribunal erred in completely ignoring profits pertaining to domestic sales and not granting atleast to the extent of profits pertaining to 25% of domestic sales in accordance with the second proviso to Section 10B(1) of the Income Tax Act, 1961 ?"

2. We have heard Ms.G.Varsitha for M/s.K.Vaitheeswaran, learned counsel for the appellant/assessee and Mr.T.Ravikumar, learned Senior 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 10.12.2020 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.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Income Tax Appellate Tribunal, Madras "C" Bench

2. The Assistant Commissioner of Income Tax,
Company Circle - III(2),
Chennai - 600 034.

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

+1cc to Mr.T.Ravikumar,
Senior Standing Counsel for Income Tax, S.R.No.11551

Tax Case Appeal No.566 of 2009

PPA(CO)
CS/18/03/2021