IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM

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

Tax Case Appeal No.871 of 2009

Mr. Bangaru Dhandapani ... Appellant

v.

The Deputy Commissioner of Income Tax,
Business Circle- I,
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Benches, Chennai, dated 28.05.2009 passed in I.T.A.No.693/Mds/2007 for the assessment year 2003-04.

As against the order of the Commissioner of Income Tax (Appeals) VI, 121 M.G.Road, Chennai-34, dated 28.11.2006 in ITA No.148/06-07 for the Assessment Year 2003-04; and

As against the proceedings by the Joint Commissioner of Income Tax, Business Range-I, Chennai-34, dated 27.09.2006 vide PAN No.AADPD4397G.

For Appellant : Mr. M. Kaushik

For Respondent : Ms. R. Hemalatha
Standing Counsel

J U D G M E N T
(Judgment was 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 28.05.2009 passed by the Income Tax Appellate Tribunal, Chennai Benches, Chennai ('the Tribunal' for brevity) in I.T.A.No.693/Mds/2007 for the assessment year 2003-04.

2. The appeal was admitted on 19.01.2010 on the following Substantial Questions of Law:

> " (i) Whether the Tribunal is correct in confirming the penalty imposed under Section 271D of the Act even though the transactions under scrutiny were established and accepted as genuine while overlooking the purpose of the provisions in Section 269 SS of the Act?
>
> (ii) Whether the Tribunal is correct in concluding the correctness of levy of penalty under Section 271D of the Act even though the binding decisions cited before them were distinguished without reasons while overlooking the provisions in section 273B of the Act?
>
> (iii) Whether the Tribunal is correct in law in affirming the levy of penalty under Section 271D of the Act even though the transactions under scrutiny were not in the nature of loan or deposit as mentioned and envisaged in Section 269 SS of the Act while in the process ignoring the Memorandum of understanding and lease agreement entered which documentary evidences demonstrated and fortified the nature of the transactions as claimed by the appellant?"

3. We have heard Mr. M. Kaushik, learned counsel for the appellant and Ms. R. Hemalatha, learned Standing Counsel for the respondent.

4. 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.

5. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Forms 1 and 2 on 09.12.2020 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 requisite Forms 1 and 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 this 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.

7. With these observations, 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-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Chennai Benches,
   Chennai.

2. The Deputy Commissioner of Income Tax,
Business Circle- I,
Chennai.

3. The Commissioner of Income Tax (Appeals) VI,
121, M.G.Road,
Chennai-34.

+1cc to Mr.T.Ravikumar, Advocate, SR.No.5429.

MGR(CO)
CSR: 09.03.2021