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.259 of 2010

M/s. Udevar Eswtate Investments,
Parry House, V Floor,
#. 43, Moore Street,
Chennai - 600 001. ... Appellant

v.

The Addl. Commissioner of Income Tax,
Business Range,
Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai dated 08.05.2008 passed in ITA.No.1331/Mds/2008 for the Assessment Year 2005-06, against order made in ITA No.204/07-08 dated 18.03.2008 on the file of the Commissioner of Income Tax(Appeals IX), 121 Mahathma Gandhi Raod, Chennai-34 against PAN No.AABFU5851E on the file of Additional Commissioner of Income tax, Business Range, IX, Chennai-06.

For Appellant : Mr. M.P. Senthil Kumar,

For Respondent : Ms. V. Pushpa
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 08.05.2008 passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai ('the Tribunal' for brevity) in I..TA.No.1331/Mds/2008 for the Assessment Year 2005-06.

2. The appeal was admitted on 15.03.2010 on the following Substantial Questions of Law:

> " (i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that redemption of mutual fund units and sale of shares was in the nature of business and the gain arising out of the redemption should be assessed as business income and not as capital gains?
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> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the appellant was not holding the mutual fund units and shares as investment merely on the fact that the appellant had switched over from certain mutual funds by redeeming the same within few days for a marginal profit?
>
> (iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that profit on sale of shares should also be treated as business income, when the Department had not raised any ground before the Tribunal with regard to treatment of profit arising out of sale of shares?
>
> (iv) Whether the Income Tax Appellate Tribunal had exceeded the scope of appeal filed by the department, in holding that profit on sale of shares should also be treated as business income when no such ground was raised by the Department before the Tribunal?"

3. We have heard Mr. M.P. Senthil Kumar, learned counsel for the appellant and Ms. V. Pushpa, 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 that the assessee has already been issued with Form - 3 on 29.01.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

6. 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(CS VII)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal, Tax, Chennai "C" Bench.

2. The Commissioner of Income Tax(Appeals IX), 121 Mahathma Gandhi Raod, Chennai-34

3. The Addl. Commissioner of Income Tax, Business Range, Chennai.

+1cc to Mr.Philip George, Advocate, SR.No.5234.

Tax Case Appeal No.259 of 2010

RGN(CO)
CSR 19.03.2021