IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2021

CORAM

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

Tax Case Appeal No.803 of 2010
and M.P.No.1 of 2010

T.Jayachandran ... Appellant

Vs.

Assistant Commissioner of Income Tax,
Business Circle VIII,
Chennai - 600 006. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 18.12.2009 passed in I.T.A.No.1074/Mds/2009.

And against the order of the commissioner of Income Tax (Appeals)-IX, Chennai-34, dated 05/03/2009 in ITA No.196/08-09 and against the order of the Assistant Commissioner of Income Tax, Business Circle-VIII, Chennai-6, dated 31/12/2008, in PAN/GIR No.AABPJ8430G.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Ms.S.Pushpa,
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 18.12.2009 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1074/Mds/2009 for the Assessment Year 2006-07. The assessee has raised the following Substantial Question of Law for consideration:

" 1) Whether the Income Tax Appellate Tribunal was right in holding that the purchase and sale of derivatives fall within the meaning of Speculative transaction under Section 43(5) of the Income Tax Act, 1961?

2)Whether the Income Tax Appellate Tribunal was right in law in holding that the derivatives which are intangibles fall within the meaning of 'commodity' occurring in Section 43(5) of the Income Tax Act, 1961?

3)Whether the Income Tax Appellate Tribunal was right in law in holding that clause (d) of Section 43 (5) introduced by the Finance Act, 2005 with effect from 01.04.2006 was not clarificatory in nature?

4)Whether the Income Tax Appellate Tribunal was right in law in not allowing the carried forward losses from the earlier years to set off against the profit for the year 2006-07?

2. We have heard Mr.M.P.Senthil Kumar, learned counsel for the appellant/assessee and Ms.V.Pushpa, learned 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 declaration on 28.12.2020 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 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 a declaration 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.

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. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Income Tax Appellate Tribunal, Madras "D" Bench, Chennai.

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

3.The Commissioner of Income Tax (Appeals)-IX
Chennai-34.

Copy to :
The Sub Assistant Registrar,
Appeal Examiner main Section,
High Court Madras-104.

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BR(CO)
RMP(26/02/2021)