IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

Tax Case Appeal No.847 of 2010

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

Vs.

The Joint Commissioner of Income Tax,
Company Range - III,
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 "B" Bench, dated 04.12.2009 passed in I.T.A.No.906/Mds/2009. Appeal against the order of the Commissioner of Tax (Appeals), Large Tax payer Unit, 2nd Floor, Jawaharlal Nehru inner Ring Road, Anna Nagar Western Extension, Chennai-101 made in ITA No.60/2007-2008/LTC(A) dated 29.01.2009 PAN No.AAACT1249H Assessment year 2004-2005. Appeal against the order of the Joint Commissioner of Income Tax, Company Range-III, Chennai - 34 made in PAN No.AAACT1249H(32001-T), dated 29.12.2006 Assessment year 2004-2005.

For Appellant : Mr.Yeswanthram
for M/s.K.Vaitheeswaran

For Respondent : Mr.T.Ravi Kumar
Senior 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 04.12.2009 passed by the Income Tax Appellate Tribunal, Madras "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.906/Mds/2009 for the assessment year 2004-05. The above appeal has been admitted on the following substantial questions of law :

> "1.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the units purchased on the record date would fall within the ambit of Section 94(7)(a) of the Income Tax Act which use the phrase 'prior to the record date'?
>
> 2.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the redemption is within three months of the record date for the purpose of Section 94(7)(b) of the Income Tax Act, when the word 'within a stated period' means something less than the moment of expiration as per the decision of the Bombay High Court in the case of CIT v. Ekbal & Co. (1944) 13 ITR 154?"

2. We have heard Mr.Yeswanthram for M/s.K.Vaitheeswaran, learned counsel appearing for the appellant/ assessee and Mr.T.Ravi Kumar, 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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 22.02.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

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, 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, is to be safeguarded. Accordingly, the Tax Case Appeal stands dismissed as withdrawn on the ground that the assessee has already been issued with Form-3 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, these Tax Case Appeal stands dismissed as withdrawn 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. Income Tax Appellate Tribunal,
   Madras "B" Bench

2. The Joint Commissioner of Income Tax,
   Company Range - III,
   Chennai - 600 034.

3. The Commissioner of Tax (Appeals)
   Large Tax payer Unit,
   2nd Floor, Anna Nagar,
   Western Extension,
   Chennai - 101.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.36117

Tax Case Appeal No.847 of 2010

SR-II(CO)
RGA(11/08/2021)