IN THE HIGH COURT OF JUDICATURE AT Chennai

DATED: 18.02.2021

CORAM

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

Tax Case Appeal No.895 of 2010

Sri Chandrakumar ...Appellant

v.

The Assistant Commissioner of Income Tax,
Company Circle,
Tirupur. ...Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, “A” Bench, Chennai dated 20.11.2009 passed in ITA.No.1341/Mds/2009 for the Assessment Year 2005-06.

Appeal against the O/o the Commissioner of Income Tax (Appeals)-II, Coimbatore, and made in I.T.A.No.69C/08-09 order dated 16/06/2009 and against O/o the Assistant Commissioner of Income-Tax Department Tiruppur, and made in PAN No. ACMPC8346F/C-809 order dated 28/11/2008 for the Assessment year 2005-06.

For Appellant : Mr.Shreekumar
for Mr. R. Sivaraman
For Respondent : Mr.T.R. Senthil Kumar
Senior 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 20.11.2009 passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai ('the Tribunal' for brevity) in ITA.No.1341/Mds/2009 for the Assessment Year 2005-06.

2. The appeal was admitted on 02.12.2008 on the following Substantial Question of Law:

> " Whether on the facts and the circumstances of the case, the bar stipulated under section 71 (2A) was only in respect of business loss under the head "profit and gains of business or profession" and the same is not precluded from claiming set off on unabsorbed depreciation against income from salary having regard to the provision of section 32 (2) of the Act?"

3. We have heard Mr.Shreekumar, learned counsel for the appellant and Mr.T.R. Senthil Kumar, learned Senior 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 30.01.2021 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 VIII)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
   Chennai 'A' Bench, Chennai.

2. The Commissioner of Income Tax,
   (Appeals)-11, Coimbatore.

3. The Assistant Commissioner of Income Tax,
   Company Circle, Tirupur.

Tax Case Appeal No.895 of 2010

RR(CO)
KKV/17/03/2021