IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

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

Tax Case Appeal No.902 of 2010

The Commissioner of Income Tax III,
Coimbatore. ...Appellant

v.

M/s. Sri Vignesh Yarn P. Ltd.,
88-F, 17C, Kamaraj Road,
Tirupur - 641 604
PAN No: AACCS4775P ... Respondent

Prayer: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 04.03.2010 passed in L.O.No.3/mds/2009 in I.T.A.No.2232/Mds/2008 for the assessment year 2002-03.

preferred against the order dated 12.09.2008, passed by the Commissioner of Income Tax (Appeals)II, Coimbatore, made in ITA.No.366/08-09, against the order dated 21.04.2008, passed by the Assistant Commissioner of Income Tax, Circle-I, Tiruppur, made in PAN/GIR/NO.AACCS4775P for the assessment year 2002-2003.

For Appellant : Mr.Karthik Ranganathan
Standing Counsel

For Respondent : Mr. R. Sivaraman

J U D G M E N T

(Judgment was Delivered by M. DURAISWAMY, J)

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 04.03.2010 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, ('the Tribunal' for brevity) in I.T.A.No.2232/Mds/2008 for the assessment year 2002-03.

2. The appeal was admitted on 14.09.2010 on the following Substantial Questions of Law:

> " (i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment is null and void ab-initio and of the view that there was a change of opinion is valid? and
>
> (ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment is null and void ab-initio, without considering the decision of the Supreme Court reported in 291 ITR 500 in the case of ACIT vs. Rajesh Jhaveri Stock Brokers P. Ltd. without considering the judgment of the Supreme Court, in which the power to reopen the assessment is much wider under the amended provision and can be exercised even after the assessee has disclosed fully and truly all material facts?"

3. We have heard Mr. Mr.Karthik Ranganathan, learned Standing Counsel for the appellant and Mr. Mr. R. Sivaraman, learned 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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

5. We are informed by the learned counsel for the respondent/assessee that the assessee has already filed the requisite Form - 1 on 29.05.2020 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 Form - 1 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

Rj

To

1. The Income Tax Appellate Tribunal,
   Madras "A" Bench, Chennai.

2. The commissioner of Income Tax-III,
   Coimbatore.

3. The Commissioner of Income Tax (Appeals)-II,
   Coimbatore

4. The Assistant Commissioner of Income Tax,
   Circle-II, Tiruppur.

5. The Sub Assistant Registrar,
   AE Section, Highcourt,
   Madras.

+1cc to Mr.T.R. SENTHILKUMAR, Advocate, S.R.No.6007

SSV(CO)
SM/05/03/2021