IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.3.2021
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA
Tax Case Appeal No.145 of 2021

The Commissioner of Income Tax, Chennai ...Appellant

Vs

Mrs.Pinky Devi ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.3.2020 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.2242/Chny/2017 for the assessment year 2014-15, appeal against the order dated 10.08.2017 made in I.T.A.No.152/CIT(A)-5/2016-17, on the file of the Commissioner of Income Tax (Appeals)-5, Chennai-600 034 for the Assessment year 2014-15 and as appeal against the order dated 17.11.2016 made in PAN ALXPP7284K, on the file of the Income Tax Officer, Non Corporate Ward-5(4) (i/c), Chennai-6 for the Assessment year 2014-15.

For Appellant: Mrs.R.Hemalatha, SSC
For Respondent: Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 04.3.2020 made in I.T.A.No.2242/Chny/2017 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2014-15.

2. The Revenue has filed this appeal by raising the following substantial questions of law :

> "i. Whether on the facts and in the circumstances of the case, the Tribunal was right in setting aside the well reasoned order passed by the Assessing officer for re-examination, especially when all the materials available with the Assessing Officer and the CIT(A) were available before

the Tribunal and there was no new material placed before it to warrant a remand?

ii. Whether on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the file of the Assessing Officer by quoting the decision in the case of Sunil Kumar Lalwani and Kanhaiyalal and Sons (HUF) in ITA No.1849/ Chny/2014 wherein the onus has been shifted to the revenue with a direction that the Assessing Officer is to bring on record the role of the assessee in promoting the company and the relation of the assessee if any with that of the promotors and role of inflating of prices etc which exercise had already been done by the AO/CIT(A)?

iii. Is not the finding of the Tribunal perverse especially when the decision of the Tribunal is contrary to the time tested principle that the person who asserts a fact has to discharge the initial burden cast upon him to show that the said facts are true and only thereafter the burden would shift to the department?”

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee.

4. The learned counsel for the assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and orders were passed on 30.12.2020 in Form No.3.

5. It is not out of place to make a mention that an identical issue has been considered by a Division Bench of this Court, to which, one of us (TSSJ) was a party, in the decision in the case of CIT Vs. Manish D.Jain [HUF] [reported in (2020) 122 Taxmann.com 180] and the issue has been answered in favour of the Revenue.

6. However, in the light of the subsequent development that the respondent/assessee opted to avail the benefit of the said scheme, the assessee is given liberty to restore this appeal in the event the ultimate decision 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 appropriate Division Bench for orders.

7. The tax case appeal stands disposed of with the aforementioned liberty. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax,
(Appeals)-5, Chennai-600 034.

3.The Income Tax Officer,
Non Corporate Ward-5(4)(i/c),
Chennai-06.

4.The Commissioner of Income Tax,
Chennai.

+1cc to Mr.T.Ravikumar, Senior Standing Counsel, SR 13407.

TCA.No.145 of 2021

LNCO)
CSR 24.03.2021