IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM

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

Tax Case Appeal No.620 of 2011

M/s.Srinivasa Foundation
7, Vidyodaya First Cross St.,
T.Nagar,
Chennai - 600 017. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Central Circle III(1),
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 "C" Bench, dated 12.08.2011 passed in I.T.A.No.1325/Mds/2010, for the assessment year 2007-08 reversing the order of the Commissioner of Income Tax(Appeals)-II, Chennai, in ITA.No.161/08-09 dated 23/4/2010 preferred against the order of the Assistant Commissioner of Income Tax (Assessing Officer) Central Circle 111(1) Chennai dated 30/12/2008 for the assessment year 2007-2008 in PAN.No.ABAFS7944N.

For Appellant : Mr.S.Sridhar

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel

J U D G M E N T
(Delivered by M. DURAISWAMY, J)

The appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order, dated 12.08.2011, passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1325/Mds/2010 for the Assessment Year 2007-08. The above appeal was admitted on 11.01.2012 on the following Substantial Questions of Law:

> "1.Whether the Tribunal is correct in sustaining the order of the respondent in disallowing Rs.9,80,000/- as per the statutory prescription in Section 40A(3) of the Act with reference to the cash payment of Rs.49,00,000/- for the purchase of land for appellant upon overlooking the non-applicability of said section 40A(3) of the Act to commercial transaction as well as the recording of such transaction in the books of accounts resulted in non-applicability of such provisions?
>
> 2.Whether the Tribunal is correct in interpreting the documents/evidence relating to the land transaction with reference to the provisions in Section 40A(3) of the Act r/w.Rule 6DD(k) of the Income Tax Rules, 1962, even though the cash payments exceeding Rs.20,000/- routed through the agent were permissible within the scope of Section 40A(3) of the Act?"

2. We have heard Mr.S.Sridhar, learned counsel for the appellant/ assessee and Mr.T.R.Senthil 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 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 requisite Forms 1 & 2 on 24.02.2021 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 the 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 the requisite Forms 1 & 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 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, 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-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Madras "C" Bench.

2.The Commissioner of Income Tax(Appeals)-II,
Chennai.

3.The Assistant Commissioner of Income Tax,
Central Circle III(1),
Chennai - 600 034.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.17822

GMI(CO)
CB(17/04/2021)