

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM

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

TAX CASE APPEAL NO.95 OF 2011

Commissioner of Income Tax - LTU,
Chennai.

... Appellant

Vs.

M/s.Neyveli Lignite Corporation Ltd.,
Neyveli - 607 801.

... 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, Chennai dated 17.09.2010 passed in I.T.A.No.1174/Mds/2008.

Against the Order of the Commissioner of Income Tax, Large Tax Payer Unit, Ch-600 101, dated 26.03.2008 under section 147 read with section 143 (3) of the Income Tax Act for the Assessment Year 2000-01.

Against the order of the Commissioner of Income Tax (Appeals)-V, Chennai dated 10.01.2008 made in ITA.No.126/06-07.

And against the order of the Assistant Commissioner of Income Tax, Company Circle IV(4), Chennai, dated 30.11.2005 under section 147 read with section 143(3) of the Income Tax Act.

For Appellant : Mr.T.Ravi Kumar,
Senior Standing Counsel

For Respondent : Mr.R.Venkata Narayanan

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

This appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 17.09.2010 passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1174/Mds/2008 for the Assessment Year 2000-01. The appeal was admitted on the following Substantial Question of Law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the reopening of the assessment under Section 147 was bad in law and therefore holding that the order under Section 263 passed by the Commissioner of Income Tax revising the assessment order passed in pursuance of such reopening would not survive?"

2. We have heard Mr.T.Ravi Kumar, learned senior standing counsel for the appellant/ Revenue and Mr.R.Venkata Narayanan, learned Counsel for the respondent/assessee.

3. It may not be necessary for this Court to decide the Substantial Question 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 respondent/assessee that the assessee has already filed the requisite Form - 1 on 29.01.2021 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 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 the 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.

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(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal, Madras "C" Bench
Chennai.
2. The Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai-600 101.
3. The Commissioner of Income Tax (Appeals)-V,
Chennai.
4. The Assistant Commissioner of Income Tax,
Company Circle IV(4), Chennai.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.10256

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GP(CO)
CS/31/03/2021