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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

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

Tax Case Appeal No.390 of 2012

M/s.Apollo Hospitals Enterprise Limited,
Ali Towers, No.55, Greams Road,
Chennai - 600 006. ... Appellant/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Company Circle - I(1),
Chennai. ... Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 18.06.2012 passed in I.T.A.No.628/Mds/2012 and against the Commissioner of Income Tax (Appeals)-III, Chennai-34 dated 21/12/2011 passed in ITA nO.38/08-09/A-III, PAN-AAACA5443N, Assessment year 2000-01.

For Appellant : Mr.N.V.Balaji

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

J U D G M E N T
(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 18.06.2012 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.628/Mds/2012 for the assessment year 2000-01. The above appeal has been admitted on 02.11.2012 on the following Substantial Questions of Law:

> "1.Whether on the facts and circumstances of the case the Tribunal was right in coming to the conclusion that the Income Tax Officer has

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jurisdiction to reopen the assessment in respect of the appellant merely because the opinion formed earlier by himself or by his predecessor, was in his opinion incorrect?

2.Whether on the facts and circumstances of the case and having regard to the materials furnished, the Appellate Tribunal was right in concluding that re-opening of assessment u/s.148 is valid in law even though the appellant had fully and truly disclosed all the materials at the time of passing the assessment u/s.143(3)?

3.Whether the mandatory conditions for reopening of the assessment have been complied with? And further is the notice issued under Section 148 of the Act barred by limitation?

4.Whether on the facts and circumstances of the case the Tribunal ought to have rendered a finding that the Income Tax Officer is bound by the Circular No.549 dated 31.10.1989 issued by the Central Board of Direct Taxes (CBDT) and could act contrary to the same?

5.Whether on the facts and circumstances of the case the Tribunal was right in dismissing that the assessee is not eligible for claiming set off of brought forward unabsorbed depreciation from M/s.Deccan Hospital Corporation Ltd., the amalgamating company of the assessee as it was not an industrial undertaking?

6.Whether on the facts and circumstances of the case the Appellate Tribunal was right in law in disallowing the claim of set off of brought forward unabsorbed depreciation of Rs.11,60,29,077/- under Section 72A from Deccan Hospital Corporation Limited, an amalgamating company with the appellant company?

7.Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in confirming the disallowance of revenue expenditure of Rs.1,29,97,773/- on lease hold buildings?”

2. We have heard Mr.N.V.Balaji, learned counsel for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the respondent/Revenue.

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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 had already been issued with Form-3 on 11.12.2020 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

5. In view of the submission made by the learned counsel for the appellant, the Tax Case Appeal stands dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

MKN

To

1. Income Tax Appellate Tribunal, Madras "D" Bench

2. The Deputy Commissioner of Income Tax,
   Company Circle – I(1),
   Chennai.

3. The Commissioner of Income Tax (Appeals)-III,
   Chennai-600 034

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.17551
+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.16591

Tax Case Appeal No.390 of 2012

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