IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.04.2021
CORAM
THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R. HEMALATHA
Tax Case Appeal No.444 of 2012

Marine Container Services South Private Limited,
No.18, Swami Sivananda Salai,
Chennai - 600 005. ...Appellant

Vs.

The Deputy Commissioner of Income Tax,
Company Circle IV (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 “D” Bench, dated 16.03.2012 passed in I.T.A.No.815/Mds/2011 against the appellate order the Commissioner of Income Tax (Appeals)-V, Chennai, against the Assistant Commissioner of Income Tax Company Circle IV(1), Chennai, made in PAN/GIR No.AACM6255A dated 26.05.2010.

For Appellant : Ms.Sri Niranjani Srinivasan

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT
(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 16.03.2012, passed by the Income Tax Appellate Tribunal, Madras “D” Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.815/Mds/2011 for the Assessment Year 2007-2008. The above appeal was admitted on 19.12.2012 on the following Substantial Questions of Law:

> "1.Whether the Income Tax Appellate Tribunal is right in law and on facts in reversing the order of the Commissioner of Income Tax Appeals and confirming the order of the Assessing Officer levying penalty under Section 271(1)(c) amounting to Rs.77,462/- in respect of the disallowance of expenditure, claimed by the appellant?

2.Whether the intention of law is that whenever there is a disallowance of expenditure penalty should be levied?

3.Whether or not mere disallowance of an expenditure by the Assessing Authority would render the return filed by the Appellant as one with inaccurate particulars?”

2. We have heard Ms.Sri Niranjani Srinivasan, learned counsel for the appellant/ assessee and Mr.Karthik Ranganathan, 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 26.02.2021 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

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax,
Company Circle IV (1),
Chennai - 600 034.

3.The Commissioner of Income Tax(Appeals)-V, Chennai

4.The Assistant Commissioner of Income Tax Company Circle IV(1),
Chennai

5.The Section Officer, Judicial Section,
High Court of Madras, Chennai

+1 cc to M/s.S.Sriniranjani, SR.No.22657

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RLD(CO)
NS(17/05/2021)