IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

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

Tax Case Appeal Nos.12 & 13 of 2013

K.Balasubramaniam ... Appellant in both T.C.As

Vs.

The Commissioner of Income Tax,
No.3, Gandhi Road,
Salem - 636 007. ... Respondent in both T.C.As

T.C.A.No.12 of 2013 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, dated 26.07.2012 passed in I.T.A.No.637/Mds/2011.

T.C.A.No.13 of 2013 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 24.09.2009 passed in M.A.No.266/Mds/2011 in I.T.A.No.659/Mds/2009, against the order of the Commissioner of Income Tax (Appeals)-Salem, made in ITA No.64/05-06 dated 09/02/2011 and 19.02.2009 against the order of the Income Tax Officer, Ward -II(3), Salem made in PAN/GIR No.23PB0051/II(3) SLM dated 30.03.2005 for the Assessment Year.

For Appellant : Mr.T.Vasudevan
(in both T.C.As)

For Respondent : Ms.V.Pushpa, Standing Counsel
(in both T.C.As)

C O M M O N J U D G M E N T

(Delivered by M.DURAISWAMY, J.)

The appeal in T.C.A.No.12 of 2013 filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 26.07.2012 passed by the Income Tax Appellate Tribunal, Madras "C" Bench, ('the Tribunal' for brevity) in I.T.A.No 637/Mds/2011 for the assessment years 2003-04. Appeal in T.C.A.No.13 of 2013 filed by the assessee under Section 260A of the Income Tax Act, 1961 directed against the order dated 24.09.2009 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in M.A.No.266/Mds/2011 in I.T.A.No.659/Mds/ 2009 for the assessment years 2003-04.

2.The appeal in T.C.A.No.12 of 2013 was admitted on 21.01.2013 on the following Substantial Questions of Law:

> "1)Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of CIT (A) under Section 154 dated 09.02.2011 when the CIT (A) has not considered and decided the issues raised before him in his order dated 19.02.2009 as laid down by this Court in 329 ITR 591?
>
> 2)Whether the Tribunal was right in deleting with the merits of the case when the issue before it was the order passed by CIT (A) in the Section 154 petition on its maintainability?
>
> 3)Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the addition of Rs.19,48,400/- as unexplained investment of the assessment year 2003-04 when even as per AO, the impounded books show only advances of Rs.3,14,500/- in this year?
>
> 4)Whether the order of the Tribunal confirming the addition was perverse, especially in the context of reliance on books impounded in survey which show the cumulative balance of advances over the years as of Rs.19.49 lakhs and not as advances pertaining to this year alone?"

3.The appeal in T.C.A.No.13 of 2013 was admitted on 21.01.2013 on the following Substantial Questions of Law:

> "1)Whether the Tribunal was justified in dismissing the M.A., when the Tribunal in its order dated 24.09.2009 had not considered and decided the issues raised before it and hence constitutes a mistake as laid down by this Court in 329 ITR 591?
>
> 2)Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the addition of Rs.19,48,400/- as unexplained investment of the assessment year 2003-04 when even as per AO, the impounded books show only advances of Rs.3,14,500/- in this year?
>
> 3)Whether the order of the Tribunal confirming

the addition was perverse, especially in the context of reliance on books impounded in survey which show the cumulative balance of advances over the years as of Rs.19.48 lakhs and not as advances pertaining to this year alone?

4)Whether the Tribunal was justified in confirming the addition based on the impounded books recording the advances till 13.01.2003, which are part of the regularly maintained books of accounts and hence, the cumulative balance of advances cannot be added as the unexplained investment?"

4.We have heard Mr.T.Vasudevan, learned counsel for the appellant/assessee and Mv.Pushpha, learned Standing Counsel for the respondent/Revenue.

5.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.

6.We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form - 3 on 30.01.2021 in respect of T.C.A.No.12 of 2013 and seeks permission of this Court to withdraw the said appeal. The learned counsel for the appellant further submitted that since Form - 3 has been issued on 30.01.2021 in respect of T.C.A.No.12 of 2013, the consequential appeal in T.C.A.No.13 of 2013 may also be dismissed as withdrawn.

7.In view of the submission made by the learned counsel for the appellant, both the Tax Case Appeals stand dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

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

3. The Commissioner of Income Tax,
   No.3, Gandhi Road,
   Salem - 636 007.

4. The Commissioner of Income Tax (Appeals),
   Salem.

5. The Income Tax Officer,
   Ward-II (3), Salem.

+1cc to Mr.M.Swaminathan, Advocate Sr.6401

Tax Case Appeal Nos.12 & 13 of 2013

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srg 03/03/2021