IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM

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

TAX CASE APPEAL NO.18 OF 2013

J.Madan Mohan ... Appellant

Vs.

The Commissioner of Income Tax,
Tiruchirapalli. ... 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 09.08.2012 passed in I.T.A.No.1470/Mds/2009.

Against the Order passed by Commissioner of Income Tax (Appeal), Tiruchirapalli dated 17.07.2009 made in ITA.No.419/07-08 for the Assessment Year 2005-06.

And as against the order passed by Income Tax Officer, Ward 1(2), Trichy dated 31.12.2007 made in PA.No./GIR.No.AAEPM8368 for the Assessment Year 2005-06.

For Appellant : Mr.V.S.Jayakumar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel and
Mrs.V.Pushpa
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 09.08.2012, passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1470/Mds/2009 for the Assessment Year 2005-06. The above appeal was admitted on 12.02.2013 on the following Substantial Questions of Law:

"1.Whether in the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal is right in law in not allowing the appeal by granting relief to the appellant by way of allowing interest expenditure in a sum of Rs.7,32,000/- by allowing the interest as deduction for the assessment year 2005-2006?

2.Whether in the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal is right in law in not following the principle of consistency as held by their Lordships of the S.C. In Union of India Vs. Kaumidini Narayan's - 249 ITR 219 SC - when admittedly the assessing officer himself had allowed similar claim made by the appellant for the earlier assessment years including the assessment year 2002-2003 when the facts were identical?”

2. We have heard Mr.V.S.Jayakumar, learned counsel for the appellant/ assessee and Mr.M.Swaminathan, learned Senior Standing Counsel and Mrs.V.Pushpa, learned 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 28.03.2021 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 IV)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax,
Tiruchirapalli.

3. The Income Tax Officer,
Ward 1(2), Trichy.

4. The Commissioner of Income Tax (Appeals)
Tiruchirapalli.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.20521
+1cc to Mr.V.S.Jayakumar, Advocate, S.R.No.20506

LN(CO)
CS/17/05/2021