IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2021

CORAM

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

Tax Case Appeal Nos.198 and 199 of 2013

Commissioner of Income Tax III,
Chennai. ... Appellant in both appeals

Vs.

M/s.Samalpatti Power Co (P) Ltd.,
Sreyas Virat, No.14, III Cross Street,
R A Puram, Chennai - 600 028. ... Respondent in both appeals

Tax Case Appeals in T.C.A. Nos.198 and 199 of 2013 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 30.07.2012, passed in I.T.A.Nos.382/Mds/2011 and 383/Mds/2011 respectively for the Assessment year 2006-07 and 2007-08 against the order of the Commissioner of Income Tax(Appeals)-V, Chennai made in ITA.No.443 and 442 of 2008-09 and 450/2009-10, dated 25/11/2010 against the assessment order of the Assistant Commissioner of Income Tax Company Circle VI(I), Chennai, dated 31/12/2009 made in PAN.AADCS1893D for the Assessment year 2007-08 against the Assessment order of the Assisant Commissioner of Income Tax, Company Circle VI(I), Chennai, made in PAN :AADCS1893D, dated 30/12/2008 for the Assessment order 2006-07.

For Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel
in both appeals

For Respondent : Ms.Sri Niranjani Srinivasan
in both appeals

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

The above appeals filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 30.07.2012 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.Nos.382/Mds/2011 and

383/Mds/2011 for the Assessment Years 2006-07 and 2007-08 respectively. The above appeals were admitted on 16.09.2013 on the following substantial questions of law :

> *"1.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in entertaining the claim for deduction of provision for rebate and other receivables amounting to Rs.15,59,85,460/- though the assessee did not raise that issue before the assessing officer and the Commissioner of Income Tax (Appeals) and the claim not having been made through a valid return of income?*
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> *2.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision for rebate and other receivables debited by the assessee to its profit and loss account is only a provision and not written off and therefore is not allowable as deduction in computing income under normal provisions of the Income Tax Act?*
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> *3.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the issue back to the assessing officer with regard to the claim for deduction of provision for rebate though the Tamil Nadu Electricity Board (TNEB) is liable to pay under the contractual obligations and that the assessee had not issued any credit note even though TNEB did not pay the same?*
>
> *4.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in remitting the issue back to the assessing officer with regard to the claim for deduction of provision for auxiliary consumption and dividend distribution tax holding that the same are credited on actual basis and not on adhoc basis?*
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> *5.Whether under the facts and circumstances of the case, the Tribunal was right in deleting interest under Section 234B ad 234C are not to be levied on the additional tax payable on account of retrospective amendment to Section 115 JB, in the absence of any provision for exclusion of levy of interest in such circumstances?"*

2. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the appellant/ Revenue and Ms.Sri Niranjani Srinivasan, learned Counsel for the respondent/assessee.

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 respondent/assessee that the assessee has already filed the requisite Forms 1 & 2 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 these appeals 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 above Tax Case Appeals stand 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 above appeals 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 appeals 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 above Tax Case Appeals stand disposed of with the aforementioned liberty and consequently, the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Madras “A” Bench

2.The Commissioner of Income Tax III,
Chennai.

3.The Assistant Commissioner of Income Tax,
Company Circle VI(I), Chennai -34.

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

+1cc to Mr.N.Muthukumar, Advocate SR.NO..20869

AKM/28.04.21/4P- 6C/

Tax Case Appeal Nos.198 & 199 of 2013
31.03.2021