IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R. HEMALATHA

Tax Case Appeal No.200 of 2013

M/s.Sri Balasubramania Mills Ltd.,
483, Kamaraj Road,
Uppilipalayam,
Coimbatore. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle - I (1),
Race Course Road,
Coimbatore. ... 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 05.11.2012 passed in I.T.A.No.476/Mds/2012. Appeal against the order dated 16/05/97 made in ITA.No.219-C/97-98 on the file of the Commissioner of Income Tax (Appeals) Coimbatore for the assessment year 1994-95 & against the order dated 21/03/97 made in P.A NO.CZ1027 on the Assistant Commissioner of Income Tax, Company Circle - II (1), Coimbatore for the assessment year 1994-95.

For Appellant : Mr.A.Satyaseelan

For Respondent : Mr.T.R.Senthil Kumar
Senior Standing Counsel
and Mrs.K.G.Usha Rani
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 05.11.2012 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.476/Mds/2012 for the assessment year 1994-95. The above appeal has been admitted on the following substantial questions of law :

> "1.Whether on the facts and circumstances of the case the Appellate Tribunal is right in holding that the claim of the assessee is not allowable as current repairs?
>
> 2.Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal, Chennai 'D' Bench, is right in denying the claim of the assessee in the light of the excepted carved out by the Hon'ble Supreme Court in Saravana Shipping Mills Pvt. Ltd case reported in 293 ITR 201 and Sri Mangayarkarasi Mills Pvt. Ltd., case reported in 315 ITR 114.
>
> 3.Whether the Income Tax Appellate Tribunal is right in law in disposing of the assessee's appeal without proper opportunity to place and refer to the evidences which were on record and even referred to by the lower authorities during the assessment and appeal proceedings?
>
> 4.Whether the Income Tax Appellate Tribunal is right in law in holding that the block asset concept would disentail the claim, arising out of replacements, under current repairs?
>
> 5.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the items of machinery replaced were to be considered independently, they are not parts of any machinery but a machinery by itself?
>
> 6.Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal failed to note that replacement of old machinery or part thereof with new one would always and in every given case constitute the bringing into existence of a new asset in the place of old one and not repair of the old existing machine?"

2. We have heard Mr.A.Satyaseelan, learned counsel appearing for the appellant/ assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Mrs.K.G.Usha Rani, 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 had already been issued with Form-3 on 19.03.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

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, 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, is to be safeguarded. Accordingly, the Tax Case Appeal stands dismissed as withdrawn on the ground that the assessee has already been issued with Form-3 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, these Tax Case Appeal stands dismissed as withdrawn with the aforementioned liberty, and consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CO-VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Assistant Commissioner of Income Tax,
   Company Circle – I (1),
   Race Course Road,
   Coimbatore.

3. The Commissioner of Income Tax (Appeals)
   Coimbatore.

4. The Assistant Commissioner of Income Tax,
   Company Circle - II (1),
   Coimbatore.

+1cc to Mr.A.Satyaseelan, Advocate, S.R.No.36087
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.36824

Tax Case Appeal No.200 of 2013

CP(CO)
CT(18/08/2021)