IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2021

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

Tax Case Appeal Nos.266 to 268 of 2013

The Commissioner of Income Tax,
Chennai. ... Appellant in all 3 TCAs

Vs.

M/s.Samalpatti Power Co (P) Ltd.,
Sreyas Virat, No.14, III Cross Street,
R.A.Puram, Chennai - 600 028. ... Respondent in all 3 TCAs

Tax Case Appeals 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.141, 142 & 1267/Mds/2011.

Against the order of the Commissioner of Income Tax (Appeals)-V Chennai-34 dated 25.11.2010 in I.T.A.Nos.443 and 442 of 2008-2009 and 450 of 2009-2010,PAN.No.AADCS1893D for the Assessment Year 2003-2004,2006-2007 and 2007-2008 and order dated 02.05.2011 in ITA No.282/10-11,PAN.No.AADCS1893D for the Assessment year 2008-2009 against the order of the Assistant Commissioner of Income Tax, Company Circle VI(1) Chennai-34 dated 30.12.2008 in PAN.No.AADCS1893D for the Assessment year 2006-2007 and the order dated 31.12.2009 in PAN.No.AADCS1893D for the Assessment year 2007-2008.

For Appellant : Mr.J.Narayanasamy,
Senior Standing Counsel

For Respondent : Ms.Sriniranjani Srinivasan

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

These appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is 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.141, 142 & 1267/Mds/ 2011 for the Assessment Year 2006-07, 2007-08 & 2008-09.

2.The above appeals were admitted 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 holding that the issue of allowability of the provision for rebate debited by the assessee to its profits and loss in computation of book profits as well as under normal provisions has to be remitted back to the assessing officer?
>
> 2)Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the provision for rebate debited by the assessee to its profit and loss account is only a provision for diminution in value of asset and therefore is to be adjusted in computing book profit under Section 115JB in view of amendment to that Section by Finance Act 2009 with retrospective effect from 01.04.2001?
>
> 3)Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the provision for rebate 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?
>
> 4)Whether under facts and circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the income has accrued to the assessee on raising of invoice on the Tamil Nadu Electricity Board for the power generated and supplied by it, not withstanding that a provision for rebate is created later?"

3. We have heard Mr.J.Narayanasamy, learned senior standing counsel for the appellant/ Revenue and Ms.Sriniranjani Srinivasan, learned Counsel for the respondent/assessee.

4. It may not be necessary for this Court to decide the Substantial Question 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.

5.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, in all the three Tax Case Appeals, under Section 4 of the Act.

6. 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 this 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 this 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.

7. 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 V)

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal,
   Madras "A" Bench
2. Commissioner of Income Tax.
   Chennai.
3. Commissioner of Income Tax
   Appeals-V, Chennai
4. Assistant Commissioner of Income Tax
   Company Circle VI(1), Chennai-34

+1cc to M/S.G. Baskar, Advocate, S.R.No.20868

Tax Case Appeal Nos.266 to 268 of 2013

SMI(CO)
PM(15/07/2021)

31.03.2021