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.985 of 2015

M/s.Vijay Dairy & Farm Products (P) Ltd.,
1/5, Alexandra Road, Cantonment,
Trichy - 620 001. ..Appellant /Appellant

Vs.

The Deputy Commissioner of Income Tax,
Circle-I(2), Trichy. ..Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 01.05.2015 passed in I.T.A.No.1195/Mds/2013, Assessment Year 2004-05 and against the order of the Income Tax Appellate Tribunal Bench "A", Chennai, dated 18/01/2011 passed in I.T.A.No.413/mds/2009, Assessment year 2004-05 and against the order of the Commissioner of Income Tax (Appeals), Tiruchirapalli, dated 20.01.2009 passed in ITA.No.499/2006-07 and against the order of the Assistant Commissioner of Income Tax Company Circle -II, Tiruchirapalli, dated 28/12/2006 passed in PAN/GIR.No.AAACV2113N, Assessment year 2004-2005.

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 01.05.2015, passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1195/Mds/2013 for the Assessment Year

2004-05. The above appeal was admitted on 26.10.2015 on the following Substantial Questions of Law:

> *"1.Whether the Tribunal was right in holding that the claim of deduction u/s. 80IA(iv)(d) and Section 80IB(3) of the Income Tax Act, 1961 is not allowable?*
>
> *2.Whether the Tribunal was right in law in holding that the claim of Section 80IA/80IB is not allowable since the assessee has not maintained any separate books of accounts for cold storage plant and the same is part and parcel of milk processing unit?*
>
> *3.Whether in the facts and circumstances of the case, the learned Income Tax Appellate Tribunal was right in law in not allowing the assessee's appeal for the assessment year 2004-05 by holding that the appellant as a small scale industrial undertaking operating a cold storage plant is eligible for full relief under Section 80IA(iv)(d) and 80IB(3) of the Income Tax Act, 1961?"*

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 III)

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Commissioner of Income Tax,
Circle-I(2), Trichy.

3.The Income Tax Appellate Tribunal,
Bench "A", Chennai.

4.The Commissioner of Income Tax(Appeals),
Tiruchirappalli - 620 001.

5.The Assistant Commissioner of Income Tax,
Company Circle -II, Range -I, Tiruchirappalli.

Copy to : 1.The Sub Assistant Registrar (A.E.Section),
High Court of Madras, Chennai.
2.The Section Officer, Judicial Department,
High Court of Madras, Chennai.

+1cc to M/s.V.S.Jayakumar, Advocate SR.NO.20505
+1cc to Mr.M.Swaminathan, Advocate SR.NO..20520

AKM/28.04.21/3P-10C/

Tax Case Appeal No.985 of 2015
29.03.2021