IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. No.568 of 2013

K.Meenakshisundaram ...Appellant/Appellant

Vs.

The Assistant Commissioner of Income Tax
Circle III,
Income Tax Department,
Tiruchirapalli. ...Respondent/Respondent

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order, dated 20.03.2013, passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, in I.T.(SS)A.No.27/Mds/2010, for the Block Period 1989-90 to 2001-02.

and against the order of the Commissioner of Income Tax Appeals, Tiruchirapalli 620 001 dated 27.08.2010 in I.T.A. No. 92/2009-2010 in the Assessment year 1989-1990 to 2001-2002.

and against the order of the Assistant Commissioner of Income Tax, Circle III, Tiruchirapalli dated 28.08.2009 PA No. AAKPM6257B in the Assessment year 1989-1990 to 2001-2002.

and against the order of the Deputy Commissioner of Income Tax Central Circle I, Madurai 625 002 dated 28.12.2001 PAN GIR No. A-207 in the assessment year 1990-1991 to 2000-2001.

For Appellant : Mr.A.S.Sriraman
for M/s.S.Sridhar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Tax Case Appeal filed by the assessee under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity), is directed against the order, dated 20.03.2013, passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, in I.T.(SS) A.No.27/Mds/2010, for the Block Period 1989-90 to 2001-02.

2.The appellant/assessee has raised the following substantial questions of law in this appeal :

"1.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s.158 BFA(2) of the Act with reference to the addition made to the extent of Rs.49,58,156/- representing the sundry debtors even though claimed as bad debts/business loss, added as undisclosed income in the quantum proceedings in spite of the admission of substantial questions of law in such quantum proceedings by this Hon'ble Court for rendering this decision within the scope of Section 260A of the Act?

2.Whether the Appellate Tribunal is correct in law in sustaining the levy of penalty u/s.158 BFA(2) of the Act relating to the addition of bad debts/business loss even though such claim for set off/deduction in the computation of undisclosed income was legally sustainable within the scope of the provisions in Chapter XIV B of the Act?"

3.We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel for the respondent/Revenue.

4.This appeal is challenging the correctness of the order passed by the Tribunal in sustaining the levy of penalty under Section 158BFA(2) of the Act. With regard to the quantum, the assessee was before this Court by filing T.C.A.Nos.44 and 45 of 2011. These appeals were disposed of by the Hon'ble Division Bench of this Court by order dated 18.02.2021, as the assessee had availed Vivad Se Vishwas Scheme and had filed Form-1 declaration on 27.01.2021. Therefore, the appeals were disposed of by granting liberty to the assessee that, in the event the matter is not settled under the said Scheme, it would be open to the assessee to restore the appeal.

5.The present appeal, as mentioned above, is with regard to sustaining the levy of penalty. If the assessee's Form-1 declaration is accepted and processed and ultimately the matter is settled in terms of Vivad Se Vishwas Scheme, then the penalty also would stand settled. Therefore, we dispose of this appeal on the ground that, as against the quantum appeal, the assessee has already filed declaration under the Vivad Se Vishwas Scheme, which in the process of being considered. We grant liberty to the assessee 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 Direct Tax Vivad Se Vishwas Act, 2020 is not in favour of the assessee and the same liberty granted to the assessee in T.C.A.Nos.44 and 45 of 2011, dated 18.02.2021, will enure to the assessee in this appeal as well. Consequently, the substantial questions of law are left open. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar
Chennai, “A” Bench.
Chennai 600 090.

2.The Assistant Commissioner of Income Tax
Circle III,
Income Tax Department,
Tiruchirapalli.

3.The Commissioner of Income Tax Appeals
Tiruchirapalli

4.The Deputy Commissioner of Income Tax
Central Circle I, Madurai

+1 CC to Mr. Sridhar, Advocate sr 42219
+1 CC to Mr. Swaminathan, advocate sr 42218.

T.C.A. No.568 of 2013

MG(CO)
SP(17/09/2021)