IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

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

Tax Case Appeal No.620 of 2013

Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Samalpatti Power Co (P) Ltd.,
First Floor, No.14, III Cross Street,
Raja Annamalaipuram,
Chennai - 600 028. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, dated 24.05.2011 passed in I.T.A.No.1657/Mds/2009, preferred against the order passed by the Commissioner of Income Tax (Appeals)-V, Chennai-600 034, dated 30/03/2009 made in ITA No.293/2007-08 against the order passed by the Additional Commissioner of Income Tax, Company Range VI, Chennai-34 dated 31/12/2007 for the Assessment Year 2005-06 made in PAN No.AADCS1893D.

For Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel

For Respondent : Ms.Sri Niranjani Srinivasan

J U D G M E N T

(Delivered by M. DURAISWAMY, J)

The above appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 24.05.2011 passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1657/Mds/2009 for the Assessment Year 2005-06. The Revenue has raised the following substantial questions of law in the above appeal :

“1.Whether under the facts and circumstances of the whether the Tribunal was right in holding that the income of Rs.8,30,68,183/- did not accrue to the assessee on invoices raised by it on TNEB towards start up fuel costs, though the assessee was following mercantile system of accounting?

2.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition of Rs.1,47,67,200/- made by the assessing officer holding that the assessee had not inflated the O&M Expenditure to the extent of amount received as deposit towards major Maintenance Expenditure?

3.Whether based on material available before it, the Income Tax Appellate Tribunal could have arrived at a conclusion that the assessee had not inflated the Operations and Maintenance Expenditure to the extent of amount received as deposit towards Major Maintenance Expenditure?

4.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the loss on sale of agricultural land would constitute long term capital loss and would be eligible for carry forward and set off in the future years?

5.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the land sold by the assessee is a capital asset, even though the land was classified as agricultural land in the revenue records and would not fall within the definition of ‘capital asset’ under the Income Tax Act?

6.Whether the Tribunal based on the material before it, could have come to the conclusion that the land sold by the assessee is not an agricultural land?”

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 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.

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(CO)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax (Appeals)-V,
Chennai-600 034.

4.The Additional Commissioner of Income Tax,
Company Range VI,
Chennai-34.

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srg 31/03/2021