IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.4.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Appeal No.182 of 2020

The Commissioner of Income Tax,
Chennai. ...Appellant/Respondent

Vs

Shri Suresh Kumar ...Respondent/ Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.11.2019 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai made in I.T.A.No.352/Chny/2019 for the assessment year 2013-14 against the order of Commissioner of Income Tax(Appeals)-5, Chennai dated 30/11/2018 in ITA No.372/CIT(A)-5/2017-18 for the assessment year 2013-14 against the assessment order of the Income Tax Officer, Non Corporate Ward-6(3), Chennai-6 dated 23/12/2017 in PAN/GIR No.AAHPJ6267D for the assessment year 2013-14.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 20.11.2019 made in I.T.A.No.352/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench ('the Tribunal' for brevity) for the assessment year 2013-14.

2. The appeal was admitted on 23.7.2020 on the following substantial questions of law :

> ""i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in setting aside the order passed by the Assessing Officer for re-examination, especially when the Assessing Officer had duly examined the matter in extenso while

passing the assessment order ?

ii. Whether on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the file of the Assessing Officer by quoting the decision in the case of Kanhaiyalal and Sons (HUF) in ITA No.1849/Chny/2014 wherein the onus has been shifted to the revenue with a direction that the Assessing Officer is to bring on record the role of the assessee in promoting the company and the relation of the assessee if any with that of the promotors and role of inflating of prices etc which exercise had already been done by the AO? and

iii. Is not the finding of the Tribunal perverse especially when the decision of the Tribunal is contrary to the time tested principle that the person who asserts a fact has to discharge the initial burden cast upon him to show that the said facts are true and only thereafter the burden would shift to the department?"

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee.

4. The learned counsel for the assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and orders were passed on 20.1.2021 in Form No.3.

5. It is not out of place to make a mention that an identical issue has been considered by a Division Bench of this Court, to which, one of us (TSSJ) was a party, in the decision in the case of CIT Vs. Manish D.Jain [HUF] [reported in (2020) 122 Taxmann.com 180] and the issue has been answered in favour of the Revenue.

6. However, in the light of the subsequent development that the respondent/assessee opted to avail the benefit of the said scheme, the assessee is given liberty to restore this appeal in the event the ultimate decision 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 appropriate Division Bench for orders.

7. The tax case appeal stands disposed of with the aforementioned liberty. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2. The Commissioner of Income Tax
(Appeals)-V, Chennai.

3. The Income Tax Officer,
Non Corporate Ward-6(3),
Chennai.

4. The Commissioner of Income Tax,
Chennai.

+1cc to Mr.S.Sridhar, Advocate SR.No.21815

+1cc to Mr.T.Ravikumar, Advocate SR.No.21550

TCA.No.182 of 2020

RS(CO)
GMY(04/06/2021)