IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM

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

TAX CASE APPEAL NO.189 OF 2020

The Commissioner of Income Tax, Chennai ...Appellant

Vs

Ms.Vilina Suresh Jain ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 20.11.2019 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.2570/Chny/ 2018 for the assessment year 2013-14 against the order of the Commissioner of Income Tax (Appeals)-15, Chennai dated 28/05/2018 in ITA No.138/2017-2018/CIT(A)-15, PAN NO.AHTPJ4647C for the Assessment year 2013-2014 against the order of the Income Tax Officer, Non Corporate Ward – 18(5), Chennai dated 14.12.2017 in PAN/GIR.NO.AHTPJ4647C for the Assessment year 2013-14

For Appellant	:	Mrs.R.Hemalatha, SSC
Respondent	:	served and no appearance

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.2570/Chny/2018 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 24.7.2020 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in remitting the issue back to the file of the Assessing Officer by quoting the decision in the case of Kanhaiyal and Sons

(HUF) in ITA.No.1849/Chny/2014, Sunil Kumar Lalwani and Aashesh Kumar Lalwani 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 promoters and role of inflating of prices, etc., which exercise had already been done by the Assessing Officer and the SEBI? And

ii. 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. Though the respondent was served and her name printed in the cause list, none appears for her.

4. The learned Senior Standing Counsel appearing for the appellant/Revenue submits 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.

5. There is no quarrel over such proposition.

6. In the light of the said decision, the above tax case appeal is allowed, the impugned order passed by the Tribunal is set aside and the substantial questions of law framed are answered in favour of the Revenue.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Commissioner of Income Tax
(Appeals)-15, Chennai 34.

3.The Income Tax Officer,
Non Corporate Ward -18(5), Chennai.

+1 cc to M/s.Ravi Kumar, Advocate Sr.No.21752

SMI(CO)
KKV/21/06/2021