IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.3.2021

CORAM

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

Tax Case Appeal No.403 of 2019

Shri P.K.Duraisamy ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Central Circle II,
Coimbatore. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.1.2019 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.816/Chny/2013 for the assessment year 2008-09, preferred against the order of the Commissioner of Income Tax (Appeals)-II, Coimbatore (CIT (A)) dated 06/03/2013 in I.T.Appeal No.59/10-11 for the Assessment Year 2008-2009 preferred against the order dated 30/06/2010 made in ACR PD1392F/08-09 passed by the Assistant Commissioner of Income Tax, Central Circle-II, Coimbatore.

For Appellant: Mr.A.S.Sriraman

For Respondent: Mr.T.R.Senthilkumar, SSC assisted by
Ms.K.G.Usharani, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 30.1.2019 made in I.T.A.No.816/Chny/2013 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2008-09.

2. The appeal was admitted on 22.7.2020 on the following substantial questions of law :

> ""i. Whether penalty under Section 271AAA of the Act is justifiably leviable in the context of wrong initiation of the

proceedings as reflected in the show cause notice issued?

ii. Whether the Appellate Tribunal has power to deviate from the decision of the jurisdictional High Court and jurisdictional Bench of the Income Tax Appellate Tribunal on the identical question of law considered and answered by them ?

iii. Whether the provisions of Section 271AAA of the Act can be justifiably invoked/ levied despite the satisfaction of the conditions for the applicability of the exceptions carved out in the said penal provisions of the Act ? And

iv. Whether the Appellate Tribunal is correct in confirming the levy of penalty under Section 271AAA of the Act in the context of the appellant/assessee surrendering the undisclosed income in the return of income filed based on the statements recorded under Section 132(4) of the Act and further undisputedly complied the other consequential conditions ?”

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Junior Standing Counsel appearing for the respondent/Revenue.

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 11.1.2021 in Form No.3.

5. In the light of the subsequent event, 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.

6. The tax case appeal stands disposed of with the aforementioned liberty. Consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

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

2.The Assistant Commissioner of Income Tax,
Central Circle II,
Coimbatore.

3.The Commissioner of Income Tax (Appeals)-II,
Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate Sr.13495
+1cc to Mr.S.Sridhar, Advocate Sr.13499

TCA.No.403 of 2019

pm[co]
srg 22/03/2021