IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.1.2021

CORAM

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

Tax Case Appeal No.103 of 2018

M/s.Virgo Properties P. Ltd.,
Chennai-17 ...Appellant

Vs

The Assistant Commissioner of
Income Tax, Corporate Circle 3(2),
Chennai-34 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 31.7.2017 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.741/Mds/2016 for the assessment year 2012-13,

against the order of the commissioner of Income Tax Appeals II chennai 34 dated 28/12/2015 in ITA.No.434/2014-15/CIT (A) II in the assessment year 2012-13

against the order of the Income Tax department dated 19.03.2015 GIR No.PAN AABCV9182A in the assessment year 2012-13.

For Appellant: Mr.A.S.Sriraman
For Respondent: Ms.V.Pushpa, 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 31.7.2017 made in I.T.A.No.741/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2012-13.

2. The assessee has filed this appeal by raising the following substantial questions of law :

> "i. Whether the interpretation of the provisions of Section 115JB of the Act is correct in so far as the inclusion of

capital gains/profits in the quantification of book profits for taxation ? And

ii. Whether the interpretation of Section 115JB of the Act so as to exclude the capital gains profit from the book profit computation given by various courts including this Court is validly and correctly followed by the Appellate Tribunal despite the decisions rendered/cited by the appellant were subsequent to the decision followed in the impugned order?"

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant/assessee and Ms.V.Pushpa, 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 31.12.2020 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 raised are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS
To

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

2.The Assistant Commissioner of Income Tax,
Corporate Circle 3(2),
Chennai-34

3.The Commissioner of Income Tax Appeals II, Chennai 34.

Copy to
The Section Officer,
Judicial Section,
High Court Madras.

+2ccs to Mr.Swaminathan, Advocate, Sr.No.1432 & 1325

TCA.No.103 of 2018

MG(CO)
RMP(27/01/2021)