IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

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

Tax Case Appeal No.168 of 2016

R.Swarna ...Appellant/Appellant

Vs.

The Assistant Commissioner of Income Tax,
Central Circle I(3),
No.108, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034. ...Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 30.04.2009 passed in I.T.A.No.2370/Mds/2007.

And this Appeal preferred against the commissioner of Income Tax (Appeals-I), Chennai-34 Order dated 10.08.2007 made in ITA.No.92/06-07 for the Assessment Year 2003-2004 and this Appeal against the Assistant Commissioner of Income Tax Central Circle-I(3), Chennai-34 Order dated 13.11.2006 made in PA/GI ANIPS3560L for the Assessment Year 2003-2004.

For Appellant : Mr.N.Devanathan
For Respondent : Mr.T.R.Senthil Kumar,
Senior Standing Counsel

J U D G M E N T
(Delivered by M. DURAISWAMY, J)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 30.04.2009 passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.2370/Mds/ 2007 for the Assessment Year 2003-04. The above appeal was admitted on 29.03.2016 on the following Substantial Questions of Law for consideration:

"1)Whether on the facts and in the circumstances of the case, the Assessing Officer has jurisdiction to decide the issue in the absence of recording of satisfaction under Section 153C of the Act?

2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the penalty under Section 271 (1) (c) of the Act and also on the basis of admission by the third party?

3) Whether on the facts and in the circumstances of the case, in the absence of finding as to the sum added, it represents and partakes the character of income for imposition of penalty?

4) Without prejudice, whether on the facts and in the circumstances of the case, the assessing officer was justified in refusing to exercise the discretion as mandated in terms of Section 271(1)(c) of the Act?"

2. We have heard Mr.N.Devanathan, learned counsel for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the respondent/ Revenue.

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 appellant/ assessee that the assessee has already filed the requisite Forms - 1 & 2 on 25.12.2020 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 the appeal in the event the ultimate decision to be taken on the Forms 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 Question of Law is left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Income Tax Appellate Tribunal, Madras "B" Bench

2.The Commissioner of Income Tax,
Central Circle I(3)

3.The Assistant Commissioner of Income Tax,
Central Circle I(3),
No.108, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

+1 cc to M/s.T.R.Senthil Kumar, Advocate Sr.No. 6009

Tax Case Appeal No.168 of 2016

KJ(CO)
RMP(26/02/2021)