IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

Tax Case Appeal No.250 of 2016

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

Vs.

M/s.Rajkumar Impex Pvt. Ltd.,
Old No.93, New No.119,
4th Floor, St.Mary's Road,
Abhiramapuram,
Chennai – 600 018. ... Respondent/Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 26.08.2015 passed in I.T.A.Nos.518/Mds/2014, and against O/o The Commissioner of Income-Tax(Appeals-V), Nungambakkam, Chennai-34, and made in ITA.No.107/13-14(A)-V, order dated 22/11/2013 and against the O/o Assistant Commissioner of Income tax Company Circle-V(3), Chennai and made on PAN/GIR.No.AAACR3577J order dt.28/03/2013 for the Assessment year 2009-10.

For Appellant : Mrs.R.Hemalathan,
for Ravikumar.
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

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

The above appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 26.08.2015 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.528/Mds/ 2014 for the Assessment Year 2009-10.

2.The above appeal was admitted on the following Substantial Questions of Law:

> “1)Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the forward contract in respect of Forex transaction entered by the assessee with the bank would not fall under the definition of speculative transaction?
>
> 2)Is not the finding of the Appellate Tribunal bad especially when the assessee has booked substantially higher amount of forward contract than the impex orders but had also cancelled 96% of the forward contracts entered by it,would clearly indicate that it was a speculative activity indulged by the assessee is foreign exchange?”

3.We have heard Mrs.R.Hemalatha, learned Senior Standing counsel for the appellant/Revenue and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

4. 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.

5.The learned counsel for the respondent/assessee submitted that the respondent/assessee had availed Vivad Se Vishwas Scheme and that the Department had also issued Form – 3 on 08.12.2020 and the assessee had filed Form – 4 on 05.05.2021.

6.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 of 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 been issued with Form – 3 and that the assessee has also filed Form – 4 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 this appeal in the event the ultimate decision to be 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 Petitino for restoration, the Registry shall place such petition before the Division Bench for orders.

7.With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the Substantial Questions of Law are left open. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

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

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

3.The Assistant Commissioner of
Income Tax Company Circle-V(3), Chennai.

+1cc to Mr.T.Ravikumar, Sr.Standing Counsel, S.R.No.32212

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RR(CO)
CB(06/08/2021)