IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM

THE HON'BLE MR.JUSTICE M. DURAISWAMY
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

Tax Case Appeal No.251 of 2016

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

Vs.

M/s.Iner Aia,
No.557, Anna Salai (1st Floor),
Teynampet, Chennai - 600 018. ... Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "SMC" Bench, dated 10.07.2015 passed in I.T.A.No.1268/Mds/2015. And against the order dated 26.02.15 made in ITA.NO.29/CIT (A)/13-14 on the file of the Commisioner of Income Tax (Appeals)4,Chennai and the order dated 2801.2014 made in GIR NO./PAN NO.AABF16553 M on the file of the Income Tax Officer,Business Ward-XV(4),Chennai for the Assessment Year 2006-2007.

For Appellant : Mr.T.Ravi Kumar,
Senior Standing Counsel

For Respondent : Mr.G.Baskar

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

The appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 10.07.2015 passed by the Income Tax Appellate Tribunal, Madras "SMC" Bench, ('the Tribunal' for brevity) in I.T.A.No.1268/Mds/2015 for the assessment year 2006-07.

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

"1)Whether on the facts and circumstances of the case, the Tribunal was right in dismissing that departmental appeal on the ground of low tax effect without going into the merits of the case especially when there was a revenue audit objection which has been accepted by the Department in the present case?

2)Whether the order passed by the Tribunal is proper especially when the present case falls under the exceptions provided in para 8(c) of the CBDT Notification dated 10.07.2014 governing the monetary limit?

3)Whether on the facts and circumstances of the case, the Tribunal was right in holding that disallowance made under Section 40(a)(ia) is not proper?

4)Whether the reasoning of the Tribunal is proper in holding that the disallowance is to be made only on those amounts, which were outstanding and not on payments which had already been paid while dealing with Section 40(a)(ia)?

5)Whether the term 'payable' would include the amount already paid with reference to Section 40(a)(ia) of the Income Tax Act, 1961?"

3.We have heard Mr.T.Ravi Kumar, learned senior standing counsel for the appellant/Revenue and Mr.G.Baskar, 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 05.12.2020.

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 the 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 been issued with Form - 3 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 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 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)

//True Copy//

Sub Assistant Registrar

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To

1.INCOME TAX APPELLATE TRIBUNAL, MADRAS "SMC" BENCH

2.THE COMMISSIONER OF INCOME TAX APPEAL-4,CHENNAI

3.THE INCOME TAX OFFICER,BUSINESS WARD-XV(4),CHENNAI.

+1cc to Mr.G.Baskar , Advocate SR.No. 24478

+1cc to Mr.T.Ravi kumar , Advocate SR.No. 24200

A.SK(11.06.2021)