IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.302 of 2016

Shri. L.K. Sudhish ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Central Circle – I[2]
Chennai – 600 034. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai Bench "B" dated 16.10.2015 passed in I.T.A.No.697/Mds/2013 for the AY 2007-08.

As against the order dated 23.08.2013 by the Office of the Income Tax Appellate Tribunal, 'B' Bench, Chennai in ITA.No.709, 710, 711, 712, 713 and 715/ MDS/2013 Assessment Year 2001-02, 02-03, 03-04, 04-05, 05-06 & 07-08 and as against the order dated 31.01.2013 by the Office of the Commissioner of Income Tax (Appeals)-I in ITA.No.355 to 361/08-09 Assessment Year 2001-2002 to 2007-08 and as against the order dated 31.12.2008 by the Office of the Assistant Commissioner of Income Tax Central Circle I (2), in PAN/GIR.No.AAWPS 0074J Assessment Year 2007-08.

For Appellant : Mr.B.Ramana Kumar & Mr.M.Velmurugan

For Respondent : Mr.T.R. Senthil Kumar Senior Standing Counsel and Ms.K.G. Usha Rani Standing Counsel

J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, 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 16.10.2015 passed by the Income Tax Appellate Tribunal, Chennai "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.697/Mds/2013 for the assessment year 2007-08. The appeal has been admitted on 20.04.2016 on the following substantial questions of law :

"1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in applying the case of the Revenue confirming the 2.5% disallowances on the appellant's appeal where the grounds of appeal and relief sought have appreciable differences?

2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in confirming disallowance which was not out of any materials seized at the time of the search and that the original assessment under Section 143 was completed?

3.Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in not considering that the Assessing Officer assumed extra jurisdictional powers in complicating the assessment and made the disallowances and the resultant interests?

4.Whether on the facts and in the circumstance of the case, the Appellant Tribunal is right in confirming disallowance where the same is already disallowed and on items that are not subject to deduction in the circumstance?

5.Whether on the facts and in the circumstance of the case, the Income Tax Appellate Tribunal is right in law in their interpretation on the calculation of interest under Ssections 234A, 234B and 234C read with Section 153A of the Income Tax Act, 1961 and its effect? And

6.Whether on the facts and in the circumstance of the case, the Appellate Tribunal is right in law in placing reliance on the facts and cases cited above in disallowing the appeal of the appellant?"

2. We have heard Mr.B.Ramana Kumar and Mr.M.Velmurugan, learned counsel appearing for the appellant/assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel and Ms.K.G.Usha Rani, learned 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 availed the benefit of Vivad Se Vishwas Scheme and the assessee had already been issued with Form-3 on 10.02.2021.

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 the appeal pending. At the same time, 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, is to be safeguarded. 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.

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

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

jeni/mkn

To

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

2.The Assistant Commissioner of Income Tax,
Central Circle - I[2],
Chennai - 600 034.

3.The Commissioner of Income Tax Appeals - I,
Chennai 34.

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

+1cc to Mr.M.Velmurugan, Advocate, S.R.No.46813

SSN(CO)
GN(15/09/2021)
KKV/17/09/2021