IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

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

TAX CASE APPEAL NO.215 OF 2018

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

Vs

M/s.Caterpillar India Private Limited,
(formerly known as Caterpillar Commercial
Private Limited and since merged)
7th Floor, International Tech Park,
Chennai Taramani Road, Taramani,
Chennai - 600 113.
PAN: AABCC4615K ...Respondent

Prayer:-APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 17.02.2017 made in ITA.No.1722/Mds/2012 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai for the assessment year 2007-08.

Appeal filed against order of the Commissioner of Income Tax Appeals-IV, 121, Mahatma Gandhi Road, Chennai 600 034 and made in ITA.No.413/11-12/A-1V in PAN.No.AABCC4615K for Assessment Year 2007-2008 in dated 30.12.2011 against Assessment order dated 24.12.2010 on the file of Deputy Commissioner of Income Tax, Chennai.

For Appellant :Mr.T.Ravi Kumar
Senior Standing Counsel
For Respondent:Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the Revenue, is directed against the order dated 17.02.2017 made in ITA.No.1722/Mds/2012 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2007-08.

2. The Revenue has raised the following substantial questions of law for consideration:

> "1. Whether the Tribunal was correct in allowing the deduction of ESOP expenses especially when the said scheme benefited only 3 persons and not all employees and therefore the same is to be treated as colorable device adopted for evading taxes?
>
> 2. While computing book profits under Section 115JB, provision made for wealth-tax is to be added back to the book profits as per Explanation 1(a) 1(i) to Section 115JB on the ground that it is unascertained liability?"

3. We have heard Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the appellant-Revenue and Mr.R.Vijayaraghavan, appearing for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the respondent/assessee.

4. The learned counsel for the respondent/assessee submits that the respondent/assessee has already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. 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 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 and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Income Tax Appellate Tribunal,
   Madras 'C' Bench, Chennai.

2. The Deputy Commissioner of Income Tax,
   Chennai.

3. The Commissioner of Income Tax Appeals IV,
   121, Mahatma Gandhi Road, Chennai-600 034.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.11092
+1cc to Mr.T.Ravi Kumar, Advocate, S.R.No.10826

TCA.No.215 of 2018

JP(CO)
CS/22/03/2021