IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM

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

Tax Case Appeal No.622 of 2016
&CMP 12687/2016

Principal Commissioner of Income Tax - 7,
121, Mahatma Gandhi Road,
Chennai. ... Appellant

v.

M/s. R.S. Enterprises,
20, Alagesan Street,
West Tambaram,
Chennai - 600 045.
PAN : AAH FR 8636 G ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "B" Bench, dated 20.01.2016 passed in I.T.A.No.88/Mds/2015, for the assessment year 2010-11.

TCA No.622 of 2016:

This appeals filed against the commissioner of Income Tax Appeals-II, Chennai in ITA No.228/2014-15 dated 25/09/2014, PAN No.AAHFR8636G for Assessment year 2011-2012, against the Deputy commissioner of Income Tax circle I, Chennai 600 045, PAN No.AAHFR8636G for Assessment year 2011-2012.

For Appellant : Mr.Karthik Ranganathan,
Senior Standing Counsel
Assisted by S.Rajesh

For Respondent : Mr.R.Kumar
for M/s.T.N. Seetharaman

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

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 20.01.2016 passed by the Income Tax Appellate Tribunal, Chennai "B" Bench, ('the Tribunal' for brevity) in I.T.A.No.88/Mds/2015 for the assessment year 2011-2012.

2. The appellant has raised the following substantial question of law in the above appeal:-

" (i) Whether, on the facts and circumstances of the case, the ITAT was right in law in deleting the disallowance made u/s.40(a)(ia) in the year under consideration as the statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act, the term 'payable' would include amounts which are paid during the previous year?

(ii) Whether, on the facts and circumstances of the case, the ITAT was right in law in holding that the provisions of section 40(a)(ia) of the Act cover only the amounts which are payable as on 31st March of a previous year relevant to the assessment year under consideration and not amounts which are payable at any time during he relevant previous year?

(iii) Whether, on the facts and circumstances of the case and in law, the ITAT erred in not appreciating and ignoring the ratio of decision in the case of Ryatar Sahakari Sakkare Karkhane Niyamit v. CIT (2016) 67 taxmann.com 283 (Karnataka) wherein it is held that section 40(a)(ia) cannot be interpreted to mean that it applies only to amounts "payable" and not to those which have been "paid"?

(iv) Whether, on the facts and circumstances of the case and in law, the ITAT was correct in not appreciating and ignoring the ratio of decision in the case of CIT vs. M/s.Crescent Export Syndicate 216 Taxman 258 (Cal) and CIT vs. Sekander Khan N Turnvar 33 Taxmann.com 133 (Gujarat) which constitutes ratio decidendi on the issue as discussed in order dated 02.08.2013 of Mumbai ITAT in the case of ACIT, Cir 4 (2) Mumbai vs. Risti Strock & Shares (P) Ltd. - ITA No.112/Mum/2012 and further whether order of ITAT had turned perverse in view of ratio of decision in the case of Sudharshan Silk Sarees vs. CIT-306 ITR 205 (SC)?"

3. We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Kumar 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. Learned counsel for the respondent/assessee submitted that the assessee had availed the Vivad Se Vishwas Scheme and that the respondent/assessee had already been issued with Form-3 on 09.02.2021.

6. .Since the respondent/assessee had been issued with Form-3, nothing survives for adjudication in the above appeal. Recording the submission made by the learned counsel for the respondent/assessee, the Tax Case Appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Principal Commissioner of Income Tax - 7,
   121, Mahatma Gandhi Road,
   Chennai.

3. The Commissioner of Income Tax (Appeal II),
   121, Mahatma Gandhi Road,
   Nungampakkam Road,
   Chennai 600 034.

4.The Deputy Commissioner of Income Tax,
  No.7, Ramakrisha Street,
  West Tambaram, Chennai 600 045.

Tax Case Appeal No.622 of 2016

VSN II (CO)
B.VC (16.08.2021)