IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

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

Tax Case Appeal Nos.346 to 348 of 2018
and
C.M.P.Nos.6565 & 6567 of 2018

Hari Poddar & Others
L/H of Smt.Prathiba Poddar
32, Ottukkaa Chinniah Street,
Erode - 638 003. ... Appellant in all appeals

Vs.

The Assistant Commissioner of Income Tax,
Central Circle - IV,
Coimbatore. ... Respondent in all appeals

Tax Case Appeals in T.C.A.Nos.346 to 348 of 2018 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 24.05.2017 passed in I.T.(SS) A.No.164/Mds/2005, I.T.(SS) A.No.170/Mds/2005 and C.O.No.37 of 2006 in I.T.(SS) A.No.170/Mds/2005 respectively as against the order dated 24/05/2017, filed by the Income Tax Appellate Tribunal, 'A'Bench, Chennai in PAN.No.AAJPH7611P, and as against the order dated 31/08/2005 in ITA.Nos.325, 326, 327-C/04-05 by the Commissioner of Income Tax (Appeals II), Coimbatore, and as against the order dated 21/10/2004, filed by the Assistant Commissioner of Income Tax, Coimbatore, for the Assessment Years 1997-98 to 2003-04 in PAN/GIR.No.AGGPP0944E.

For Appellant : Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padmanabhan in all appeals

For Respondent : Mr.T.R.Senthil Kumar Senior Standing Counsel in all appeals

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

The above appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), are directed against the order dated 24.05.2017 passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, ('the Tribunal' for brevity) in I.T.(SS) A.No.164/Mds/2005, I.T.(SS) A.No.170/Mds/2005 and C.O.No.37 of 2006 in I.T.(SS) A.No.170/Mds/2005 for the Block Period 1997-98 to 2003-04 (upto 08.08.2002).

2.The appellant/assessee has raised the following substantial questions of law in the above appeals :

T.C.A.No.346 of 2018 :

"1.Whether the Income Tax Appellate Tribunal was right in law holding that the block assessment order passed on 21.10.2004 is within time limit as prescribed in Explanation 2 to Section 158BE(1)(b) of the Income Tax Act 1961 without appreciating that the last Panchanama in respect of execution of relevant of warrant of authorization was drawn on 08.08.2002 and not on 01.10.2002?

2.Whether the Tribunal was right in law in following the judgment in the case of VLS Finance Ltd. v. CIT [384 ITR 1 (SC)] which has no application to the facts of the present case?

3.Whether the Tribunal was right in law in holding that block assessment is not barred by limitation without appreciating that in the present case, there was no subsequent search at all and only Panchanamas were prepared subsequently and that too, regarding the lifting of prohibitory orders?

4.Whether the Income Tax Appellate Tribunal was right in law in holding that the Panchanama drawn on 01.10.2002 (in the case of Hari Poddar the last Panchanama was drawn on 3.10.2002) in respect of all three assessees consequent to physical seizure of the hard disk on the basis of the main warrant issued by the D.I.T. Chennai has to be treated as Last Panchanama and therefore, the assessment order passed on 21.10.2004 were within two years from the end of the month in which the last Panchanama was drawn?

5.Whether the Tribunal was right in law in holding that the last Panchanama was drawn in relation to the appellant on 01.10.2002 and thereby upholding the block assessment without deciding on the legality of the conclusion of search with reference to the

Panchanama dated 01.10.2002?

6.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in sustaining the following - addition of Rs.61.00 Lakhs as undisclosed bank account, addition of Rs.10.27 Lakhs on account of unaccounted purchases, addition of Rs.22.55 Lakhs on account of profit from Vigneswara Traders?"

T.C.A.No.347 and 348 of 2018 :

"1.Whether the Income Tax Appellate Tribunal was right in law in restoring the addition of Rs.10.27 Lakhs on account of unaccounted purchases without appreciating the fact that these amounts were received from the parties for supply of goods and hence it could not be treated as cash credit for the purpose of Section 68 of the Income Tax Act, 1961?

2.Whether the Income Tax Appellate Tribunal was right in law in restoring the addition of Rs.22.55 Lakhs on account of profit from Vigneswara Traders without appreciating that the appellant had maintained accounts with Vigneswara Traders in the regular course of its business even before the date of search and advance tax was also paid in discharge of the income tax liability in the assessment year 2002-03 including profits from this business?

3.Whether the Income Tax Appellate Tribunal was right in law in restoring the addition of Rs.1.25 Crores on account of unexplained cash credits as cash credits under Section 68 of the Income Tax Act, 1961 without appreciating that this amount was recorded in the books of account regularly maintained by the appellant and that these amounts were received from the parties for supply of goods and hence it could not be treated as unexplained credits under Section 68 of the Act?

4.Whether the Tribunal was right in law in holding that u/s.68 of the Act entire unexplained credit to be considered as income of the assessee and there is no question of estimation of GP on unexplained credit so as to determine the undisclosed income?"

3.We have heard Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padamanabhan, learned counsel for the appellant/ assessee and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the respondent/Revenue.

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. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 24.03.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the above appeals.

6. In view of the submission made by the learned counsel for the appellant/assessee, the above Tax Case Appeals stand dismissed as withdrawn. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mkn

To

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

2. The Commissioner of Income Tax (Appeals II),
   Coimbatore.

3. The Assistant Commissioner of Income Tax,
   Central Circle - IV,
   Coimbatore.

+1cc to Mr.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.24194
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.23828

Tax Case Appeal Nos.346 to 348 of 2018

SVI(CO)
GN(08/07/2021)