IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.3.2021

CORAM

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

TAX CASE APPEAL NO.619 OF 2018

G.V.David Rajan ...Appellant

Vs

The Commissioner of Income Tax-10, Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.5.2017 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.No.991/Mds/2015 for the assessment year 2010-11.

Against the order dated 18.03.2015 made by the Commissioner of Income Tax (Appeals) for the Assessment Year 2010-11 in ITA.No.77 CIT(A)-14/2013-14, against the proceedings of the Income Tax Officer, Office of the Income Tax Officer Business Ward-III (3) made in Assessment order dated 25.03.2013 for the Assessment year 2010-11.

For Appellant : Mr.N.V.Narayanan for Mr.N.V.Balaji

For Respondent: Mr.M.Swaminathan, SSC assisted by Mrs.V.Pushpa, JSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 11.5.2017 made in I.T.A.No.991/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) for the assessment year 2010-11.

2. The assessee filed this appeal by raising the following substantial questions of law :

““i. Whether, under facts and circumstances of the case, the Tribunal was right in holding that the land of the appellant was not an agricultural land on the date of sale and hence, the capital gains upon converson of agricultural land into stock into trade is liable to tax ?

ii. Whether, on facts and circumstances of the case, the Tribunal could have come to the conclusion that the land was non agricultural land based on material before it?

iii. Whether, on facts and circumstances of the case, the Tribunal was right in holding that 5% of the expenses incurred by the appellant in its business should be disallowed? And

iv. Whether, on facts and circumstances of the case, the Tribunal was right in holding the value of the opening stock of land as on 01.4.2009 should be computed as per reverse indexation method?”

3. We have heard Mr.N.V.Narayanan, learned counsel appearing on behalf of the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel assisted by Mrs.V.Pushpa, learned Junior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel for the assessee submits that the assessee already filed the declaration/undertaking under the Vivad Se Vishwas Scheme and orders were passed on 18.12.2020 in Form No.3.

5. In the light of the subsequent event, the assessee is given liberty to restore this appeal in the event the ultimate decision 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. Consequently, the substantial questions of law raised are left open. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

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

2. The Commissioner of Income Tax-10,
Chennai-34.

3. The Income Tax Officer Business Ward-III(3),
Chennai.

Copy To
The Assistant Registrar,
Appeal Examiner Section Main,
High Court, Madras-104.

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.15146
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.15063

TCA.No.619 of 2018

AK-II(CO)
CS/01/04/2021