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 Nos.631 to 634 of 2018
and CMP.Nos.12785 to 12787 of 2018

M/s.GE T&D India Ltd.,
Chennai-43 (cause title accepted
vide order of court dated 14.3.2017
in CMP.Nos.4174 to 4177 of 107 by
RSAJ and RSKJ) ...Appellant in all cases

Vs

The Deputy Commissioner of
Income Tax, Large Taxpayer
Unit, Chennai-101 ...Respondent in all cases

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.3.2016 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai made in I.T.A.Nos.662 and 663/ Mds/2013 as well as C.O.Nos.12 and 13/Mds/2014 in I.T.A.Nos.662 and 663/Mds/2013 respectively for the assessment years 2003-04 and 2004-05. against the order passed by the Commissioner of Income-Tax(Appeals) dated 11.01.2013 made in ITA No.18/10-11/LTU(A) and ITA No.93/11-12/LTU (A) against the order dated 13.10.2010 and 19.12.2021 in PAN No.AAACG 2115 R on the file of the Deputy Commissioner of Income - Tax, Large Taxpayer Unit Chennai for the assessment year 2003-04 and 2004-05.

For Appellant : Mr.M.P.Senthilkumar
For Respondent: Mrs.R.Hemalatha, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals have been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the common order dated 31.3.2016 made in I.T.A.Nos.662 and 663/ Mds/2013 as well as C.O.Nos.12 and 13/Mds/2014 in I.T.A.Nos.662 and 663/ Mds/2013 on the file of the Income Tax Appellate Tribunal, 'D' Bench, Chennai (for short, the Tribunal) respectively for the assessment years 2003-04 and 2004-05.

2. The assessee has filed these appeals by raising the following substantial questions of law :

> "TCA.Nos.631 and 633 of 2018 :
>
> 1. Whether on the facts and in the circumstances of the care, the Appellate Tribunal was right in law in not permitting the appellant to invoke Rule 27 of Income Tax Appellate Tribunal Rules, 1963 to challenge the jurisdiction of the Assessing Officer under Section 147 in department's appeal?"
>
> 2. Whether on the facts and in the circumstances of the case, the Assessing Officer had rightly exercised his jurisdiction u/s. 147 in reopening of assessment?
>
> 3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the reopening of assessment u/s. 147 is time barred/ barred by limitation?"
>
> 4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the reopening of assessment u/s. 147 is invalid as the same is based on change of opinion?
>
> 5. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that reopening of assessment cannot be made on the basis of retrospective amendment to Section 9 inserted by Finance Act, 2011 to unsettle the completed assessment beyond 4 years?
>
> 6. Whether on the facts and in the circumstances of the case, the Assessing Officer had rightly exercised his jurisdiction u/s. 147 in reopening of assessment?
>
> 7. Whether on the facts and in the circumstances of the case, we Income Tax Appellate Tribunal was right in law in holding that the appellant is liable to deduct tax at source u/s 195 of the Income Tax Act, 1961, on the payment made towards

testing charges to International Certifying Laboratories, who were non resident foreign companies viz. KEMA, Netherlanads and CESI, Italy?

8. Whether on the facts and in the circumstances of the case, Income Tax Appellate Tribunal was right in law in not considering the fact that the said testing service does not amount to make available of technical knowledge, but is in the nature of business income in the hands of International Certifying Laboratories, who were non resident foreign companies viz. KEMA, Netherlands and CESI, Italy?

9. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Appellant do not fall under the exceptions provided u/s. 9(1)(vii)(b) of the Income Tax Act, 1961?

10. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the disallowance u/s. 40(a)(i) of the Income Tax Act, 1961 in respect of expenditure by way of payment made by the Appellant to non residents towards testing charges? and

11. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not considering that the disallowance u/s. 40(a)(i) of the Income Tax Act, 1961, can be made only in respect of such amounts, which are payable as on 31st March of the year under consideration and cannot be made on the amount, which were already paid on such balance sheet date?

TCA.Nos.632 and 634 of 2018 :

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in dismissing the cross objection filed by the appellant by not condoning the delay in filing the cross objection ?

2. Whether on the facts and in the circumstances of the case, the Assessing Officer had rightly exercised his jurisdiction u/s. 147 in reopening of assessment?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the reopening of assessment u/s. 147 is time barred/ barred by limitation?”

4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the reopening of assessment u/s. 147 is invalid as the same is based on change of opinion?

5. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that reopening of assessment cannot be made on the basis of retrospective amendment to Section 9 inserted by Finance Act, 2011 to unsettle the completed assessment beyond 4 years? and

6. Whether on the facts and in the circumstances of the case, the Assessing Officer had rightly exercised his jurisdiction u/s. 147 in reopening of assessment?”

3. We have heard Mr.M.P.Senthilkumar, learned counsel for the appellant/assessee and Mrs.R.Hemalatha, learned Senior Standing Counsel for the respondent/Revenue.

4. The learned counsel for the assessee submits that the assessee already filed the declaration/undertaking in the respective cases under the Vivad Se Vishwas Scheme and orders were passed in Form No.3 respectively on 20.1.2021 in TCA.Nos.631 and 632 of 2018 and on 25.1.2021 in TCA.Nos.633 and 634 of 2018.

5. In the light of the subsequent event, the assessee is given liberty to restore these appeals in the event the ultimate decision taken in the respective cases 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 petition to be filed for condonation of delay in restoration of the appeals and on such request made by the assessee by filing miscellaneous petitions for restoration, the Registry shall place such petitions before the appropriate Division Bench for orders.

6. The tax case appeals stand disposed of with the aforementioned liberty. Consequently, the substantial questions

of law raised are left open. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

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

2.The Deputy Commissioner of Income Tax, Large Taxpayer Unit Chennai-101.

3.The Commissioner of Income TaX (Appeals) Large Taxpayer unit,Chennai.

4.The Section Officer, A.E.Section, High Court, Madras.

5.The Section Officer, Judicial Section, High Court, Madras.

+1 cc to Mr.M.P.Senthilkumar, Advocate Sr No.15005
+1 cc to Mr.T.Ravi Kumar,Advocate Sr No.15390

TCA.Nos.Nos.631 to 634 of 2018
& CMP.Nos.12785 to 12787 of 2018
09.3.2021

RGN(CO)
RG.26.04.2021(5P.8C)