IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.3.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.696 of 2018

Shri F.Susai Raju ...Appellant

Vs

The Income Tax Officer, Corporate
Ward 5(2), Chennai-34. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.1.2017 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.2423/Mds/2016 for the assessment year 2012-13 as against the order dated 30.06.2016 by the office of the Commissioner of Income Tax (Appeals)-3 Chennai in I.T.A.No.96/2015-16/CIT(A)-3 Assessment year 2012-13 and as against the order dated 30.03.2015 in PAN/GIR No.ANCPS5794G by the Income Tax Officer, Corporate Ward-5(2) Assessment year 2012-13.

For Appellant: Mr.M.P.Senthilkumar

For Respondent: Mrs.R.Hemalatha, SSC

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 30.1.2017 made in I.T.A.No.2423/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2012-13.

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

""i. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the gift received by the appellant from Shri M.Amaloresamy cannot be treated as 'gift in contemplation of death' as per Proviso (d) to Section 56(vii) of the Income Tax Act, 1961?

ii. Whether, on the facts and in the circumstances of the case, the gift received by the appellant was 'in contemplation of death' of donor and the same satisfies the provisions of Section 191 of the Indian Succession Act, 1925 and not assessable as income of the appellant under Section 56 of the Income Tax Act, 1961 ? and

iii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the disallowance under Section 40A (3) of the Income Tax Act, 1961 in respect of genuine payment of sale consideration to the vendors in cash for purchase of immovable property out of business expediency ?"

3. We have heard Mr.M.P.Senthilkumar, learned counsel appearing for the appellant/assessee and Mrs.R.Hemalatha, learned Senior 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 23.12.2020 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 IV)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Income Tax Officer,
Corporate Ward 5(2), Chennai-34.

3.The Commissioner of Income Tax (Appeals)3,
Chennai.

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

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

+1cc to Mr.M.P.Senthil Kumar, Advocate, S.R.No.20418

TCA.No.696 of 2018

SSM(CO)
TE (30/04/2021)