

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR. JUSTICE M. DURAISWAMY
AND
THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Tax Case Appeal No.185 of 2014

Commissioner of Income Tax,
Chennai.

...Appellant/Appellant

Vs.

M/s.Samalpatti Power Co (P) Ltd.,
First Floor, No.14, III Cross Street,
Raja Annamalaipuram,
Chennai - 600 028.

...Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, dated 26.07.2013 passed in I.T.A.No.827/Mds/2013 against the order of the Commissioner of Income Tax (Appeals V) Chennai dated 31.01.2013 and made in I.T.A.No.273/2011-2012 against the assessment order dated 14.12.2011 of the Assistant Commissioner of Income Tax, Company Circle VI(1) Chennai made in PAN AADCS1893D for the Assessment year 2009-2010.

For Appellant : Mr.J.Narayanaswamy
Senior Standing Counsel

For Respondent : Ms.Sri Niranjani Srinivasan

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

The above appeal filed by the Department under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 26.07.2013 passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.827/Mds/2013 for the Assessment Year 2009-10. The above appeal was admitted on 16.04.2014 on the following substantial question of law :

"Whether under the facts and circumstances of the case, whether the Tribunal was right in holding that the income of Rs.6,95,29,212/- did not accrue to the

assessee on invoices raised by it on TNEB towards start up fuel costs, though the assessee was following mercantile system of accounting?"

2. We have heard Mr.J.Narayanaswamy, learned Senior Standing Counsel for the appellant/ Revenue and Ms.Sri Niranjani Srinivasan, learned Counsel for the respondent/assessee.

3. It may not be necessary for this Court to decide the Substantial Question 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.

4. We are informed by the learned counsel for the respondent/assessee that the assessee has already filed the requisite Forms 1 & 2 on 29.01.2021 under Section 4 of the Act.

5. In the light of the fact that the assessee has already availed the benefit under the Act, no useful purpose would be served in keeping this appeal pending. At the same time, safeguarding the interest of the assessee in the event the order to be passed by the Department under the Act is not in favour of the assessee. Accordingly, the Tax Case Appeal stands disposed of on the ground that the assessee has already filed the requisite Forms 1 & 2 and the Department shall process the application at the earliest in accordance with the said Act and communicate the decision to the assessee at the earliest. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be 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 Division Bench for orders.

6. With this observation, the Tax Case Appeal stands disposed of with the aforementioned liberty and consequently, the substantial question of law is left open. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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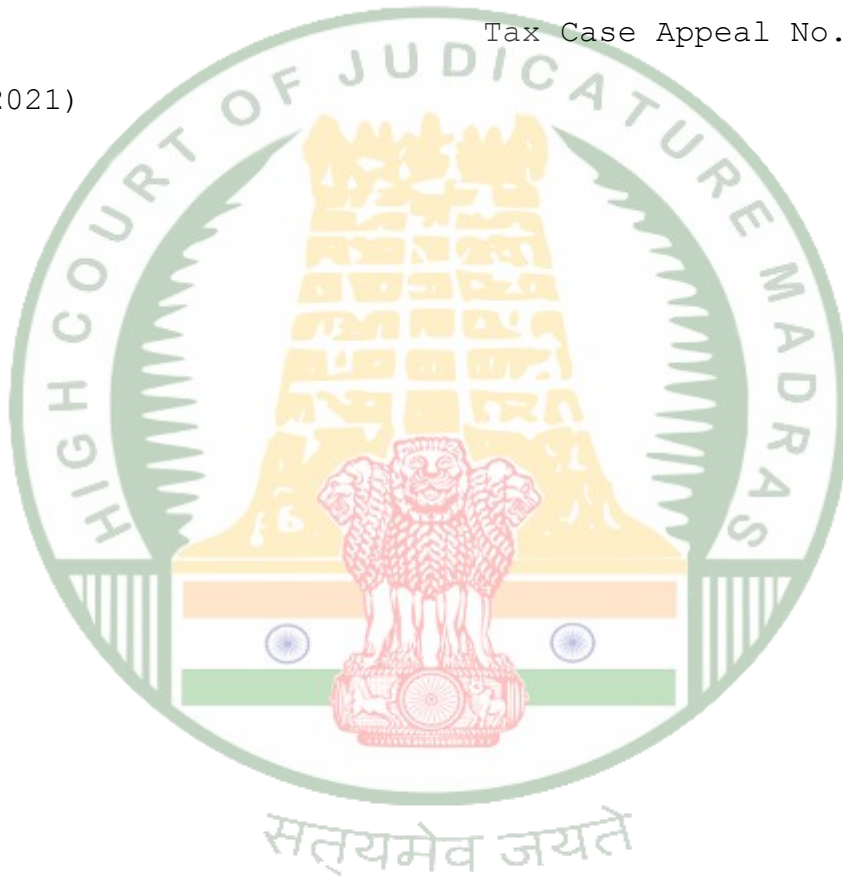
To

1.The Income Tax Appellate Tribunal, Madras "C" Bench

2.The Commissioner of Income Tax,
Chennai.

GJ(CO)
SP(18/03/2021)

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