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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

CORAM

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

Tax Case Appeal Nos.248 to 252 of 2017

M/s.M.Ct.M.Global Investments Private Limited
761, Anna Salai,
Chennai - 600 002.

...Appellant in all appeals

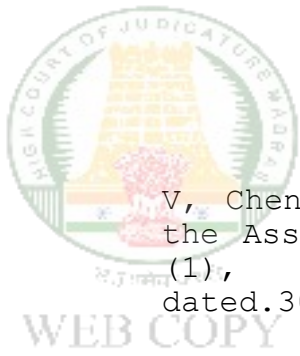
Vs.

The Asst. Commissioner of Income Tax,
Company Circle IV(1),
Chennai - 600 034.

... Respondent in all appeals

Tax Case Appeals in Tax Case Appeal Nos.248 to 252 of 2017 filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 21.10.2016 passed in I.T.A.No.1438/Mds/2009, C.O.No.167/Mds/2009 in I.T.A.No.1438/Mds/2009, I.T.A.Nos.1873/Mds/2008, 1954/Mds/2008 and 456/Mds/2009 respectively against the order of the Commissioner of Income Tax (A)-V, Chennai-34 dated 21.01.2009 for the Assessment year 2001-02 in ITA No.133/2008-09 dated 21.01.2009 as against the Assessment order of the Income Tax Officer, Company ward-IV(1), Chennai-34, dated.06.03.2006.(ITA.1438/Mds/2009) in PAN/GIR-AABCM9738K/MC-6 IN TCA No.248 of 2017.

Against the order of the cross objection No.167/2009 dated.03.10.2009 for the Assessment Year 2001-02 and Assessment order of Income Tax Officer IV (1), Chennai-34, dated.30.11.2006 in PAN/GIR No.AABCM9738K/MC-6 (in ITA 1438/Mds/2009) in TCA No.249/2017.



Against the order of the Commissioner of Income Tax (A)-V, Chennai-34, dated.06.02.2008 in ITA No.396/2006-2007 against the Assessment Order of the Income Tax Officer, Company Ward-IV (1), Chennai-34, for the Assessment Year 2004-2005 dated.30.11.2006 (in TCA No.250/2017) and TCA No.251/2017.

Against the order of the Commissioner of Income Tax (A)-V, Chennai-34 in ITA No.370/07-08 dated.15.01.2009 for the Assessment Year 2005-06 against the Assessment order of the Additional Commissioner of Income Tax, Company Range-IV, Chennai-34, dated.31.12.2007. (in TCA No.252/2017) in PAN : GIR No.AABCM9738K.

For Appellant : Ms.Sri Niranjani Srinivasan
for M/s.G.Baskar
in all appeals

For Respondent : Mr.Karthik Ranganathan
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 21.10.2016 passed by the Income Tax Appellate Tribunal, Chennai "A" Bench, ('the Tribunal' for brevity) in I.T.A.No.1438/Mds/2009, C.O.No.167/Mds/2009 in I.T.A.No.1438/Mds/2009, I.T.A.Nos.1873/Mds/2008, 1954/Mds/2008 and 456/Mds/2009 for the assessment years 2001-02, 2001-02, 2004-05, 2004-05 and 2005-06 respectively. The appellant/assessee has raised the following substantial questions of law in the above appeals:

"T.C.A.No.248 of 2017 :

1.Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that expenditure incurred by Malaysian Branch cannot be treated as allowable expenditure even if income from Malaysian Branch was treated as taxable income in India?



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2. Whether on the facts and in the circumstances of the case, expenditure incurred for earning an income has to be allowed either under the head "business" or under the head "other sources" according to the treatment of the income under the head "business" or under the head "other sources" in accordance with section 37 or under section 56 of Income Tax Act, 1961 respectively?

3. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the claim of the Appellant that the income derived in Malaysia constitutes business income, even when the Appellant is systematically and continuously carrying on business of purchase/sale of investments?

4. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the appellant is liable to pay interest under section 234B of Income Tax Act, 1961?

5. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the appellant is liable to pay interest under section 234D of Income Tax Act, 1961?

T.C.A.No.249 of 2017 :

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in upholding the jurisdiction of Assessing Officer in reopening the assessment under section 147?

2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the Assessing Officer has "reason to believe" and is justified in reopening the assessment by issuance of notice under section 148 in the absence of any new or tangible material?

3. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in observing that non issuance of notice under section 143(2) of the Income Tax Act within the time



stipulated therein, amounts to procedural irregularity and it will not make reassessment nullity in law?

4. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income earned by Malaysian Branch of the company is taxable in India and not taxable in Malaysia?

5. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the income by way of interest had to be classified as "income from other sources and not "income from business", even if assessee is the nonbanking financial company and the interest income earned in the course of its business activity?

6. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the dividend income is liable to be taxed under the head "income from Other Sources" and not under the head "income from business"?

7. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income/loss on purchase and sale of stock-in-trade is liable to be taxed under the head "capital gains".

8. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the claim of the Appellant that the income derived in Malaysia constitutes business income, even when the Appellant is systematically and continuously carrying on business of purchase/sale of investments?

T.C.A.No.250 of 2017 :

1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income earned by Malaysian Branch of the company is taxable in India and not taxable in Malaysia?



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2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the claim of the Appellant that the income derived in Malaysia constitutes business income, even when the Appellant is systematically and continuously carrying on business of purchase/sale of investments?

T.C.A.No.251 of 2017 :

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the income by way of interest had to be classified as "income from other sources" and not "income from business", even if assessee is the nonbanking financial company and the interest income earned was out of its investment activity?

2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in holding that the dividend income had to be classified as "income from other sources" and not "income from business"?

T.C.A.No.252 of 2017:

1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income earned by Malaysian Branch of the assessee company is taxable in India and not taxable in Malaysia?

2. Whether on the facts and circumstances of the case, income from Malaysian Branch, should be considered as part of "book profits" for the purpose of section 115 JB of Income Tax Act?

3. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the interest income is liable to be taxed under the head "Other Sources"?

4. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the dividend income is liable to be taxed under the head "Other Sources"?



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5. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in law in rejecting the claim of the Assessee that the income derived in Malaysia constitutes business income, even when the Appellant is systematically and continuously carrying on business of purchase/sale of investments?"

2. We have heard Ms. Sri Niranjani Srinivasan, learned counsel appearing for the appellant/ assessee and Mr. Karthik Ranganathan, learned Senior Standing Counsel for the respondent/Revenue.

3. 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.

4. We are informed by the learned counsel for the appellant/ assessee that the assessee had already been issued with Form-3 on 27.01.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the above appeals.

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 these appeals pending. At the same time, 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, is to be safeguarded. Accordingly, the Tax Case Appeals stand dismissed as withdrawn on the ground that the assessee has already been issued with Form-3 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 these appeals 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 these appeals 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, these Tax Case Appeals stand dismissed as withdrawn with the aforementioned liberty, and consequently, the Substantial Questions of Law are left open. No costs.

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Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

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To

1. The Registrar,

Income Tax Appellate Tribunal,

Chennai "A" Bench

2. The Commissioner of Income Tax (Appeals V)
Chennai - 600034

3. The Asst. Commissioner of Income Tax,
Company Circle IV(1),
Chennai - 600 034.

4. The Income Tax Officer, Ward (V) (1), Chennai-34

5. The Additional Commissioner of Income Tax,
Company Range-IV, Chennai-34

+1CC to M/s. Sriniranjani, Advocate, Sr.No.32727

T.C.A. Nos.248 to 252 of 2017

PPA (CO)

K.RK. (06.08.2021)