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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

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

Tax Case Appeal No.256 of 2017

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

...Appellant

Vs.

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

... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, dated 21.10.2016 passed in I.T.A.No.1936/Mds/2012, against the order of the Commissioner of Income Tax (A)-V, Chennai-34 in ITA No.345/11-12, dated 31.07.2012 for the Assessment Year 2009-2010 against the order of the Assistant Commissioner of Income Tax, Company Circle IV (1), Chennai, dated.28.12.11.

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

For Respondent : Mr.Karthik Ranganathan
Senior Standing Counsel

J U D G M E N T

(Delivered by M.DURAISWAMY, J.)

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order dated 21.10.2016 passed by the Income Tax Appellate Tribunal, Madras "A" Bench, ('the Tribunal' for



brevity) in I.T.A.No.1936/Mds/2012 for the assessment year 2009-10. The appellant/assessee has raised the following substantial questions of law in the above appeal:

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?

2. 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?

3. 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?

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 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?

5. 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"?

6. 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".



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7. 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?"

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 01.02.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

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 the appeal 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 Appeal stands 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 the 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, these Tax Case Appeal stands 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)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
Income Tax Appellate Tribunal,
Chennai "A" Bench
 2. The Asst. Commissioner of Income Tax,
Company Circle IV(1),
Chennai - 600 034.
 3. The Commissioner of Income Tax (Appeals V)
Chennai - 600034
- +1CC to M/s.Sriniranjani, Advocate, Sr.No.32725

Tax Case Appeal No.256 of 2017

PPA (CO)
K.RK. (06.08.2021)