IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2021

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal No.571 of 2017

Shri P.Sukumar ... Appellant

Vs.

The Income Tax Officer,
Ward-1(1)
Salem ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "D" Bench, dated 17.03.2017 passed in I.T.A.No.442/Mds/2013 for the Assessment Year 2009-10 against the order of the Commisioner of Income Tax(Appeals) Salem 7, dated 04.01.2013 passed in ITA.NO.245/2011-12 for the Assessment Year 2009-10 against the order of the Income Tax Officer Ward I (1),Salem dated 30.12.2011 passed in PAN:AGUPS 0835P for the Assessment Year 2009-10.

For Appellant : Mr.S.Sridhar
For Respondent : Mrs.V.Pushpa,
Standing Counsel

J U D G M E N T
(Judgment was delivered by R. MAHADEVAN,J.)

This Tax Case Appeal has been filed by the appellant / Assessee challenging the order dated 17.03.2017 passed by the Income Tax Appellate Tribunal, Bench 'D', Chennai ('the Tribunal', for brevity) in I.T.A.No.442/Mds/2013 for the assessment year 2009-10 raising the following substantial questions of law :

> "1.Whether the Appellate Tribunal is correct in ignoring the return of income filed for the Assessment Year 2009-10 applying the principles of diversion of income by overriding title in reporting the sale of the property/capital asset directly by the bank in appropriating the sale proceeds against the liability created by the company in which the appellant was the substantial stake holder?

2. Whether the Appellate Tribunal is correct in not considering the scope of section 48 of the Act in the context of determining the quantum of sale consideration for the purpose computing Long Term Capital Gains on the facts of the case while further not considering the alternative claim for allowing the appropriated amount as expenses incurred in connection with the transfer by assigning wider meaning to the statutorily incorporated terms in the said section 48 of the Act?

3. Whether the Appellate Tribunal is correct in not considering the second alternate scenario of the appellant incurring loss in the capital field consequent to the sale of the capital asset directly by the bank which loss in any event should be set off against the computed Long Term Capital Gains independently by the Respondent/ Assessing Officer?"

2.When the matter was taken up for consideration, the learned counsel appearing for the appellant / assessee submitted that during the pendency of this tax case appeal, the assessee has filed the requisite Forms 1 and 2 under Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020, which were accepted and Form 5 was issued to the assessee on 25.3.2021 by the Income Tax Department. The learned counsel has also filed memo, dated 21.10.2021 to that effect.

3.The aforesaid submission made by the learned counsel for the appellant/assessee has also been fairly conceded by the learned standing counsel appearing for the respondent/ Revenue.

4.This court heard the submissions made by the learned counsel on either side, as per which, the assessee has already availed the benefit conferred under the beneficial legislation viz., the Direct Tax Vivad Se Vishwas Act, 2020, enacted for resolution of disputed tax and for matters connected therewith or incidental thereto, which came into force with effect from 17.03.2020; and the declarations submitted by assessee were also accepted and Form 5 was also issued to them by the Income Tax Department. In view of such development, it is unnecessary for this court to decide the substantial question of law arisen in this tax case appeal.

5.Therefore, recording the submissions so made by the learned counsel on either side, this appeal stands disposed of, directing the department to process the application at the earliest in accordance with the Act and communicate the decision to the assessee at the earliest. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msr
To

1. Income Tax Appellate Tribunal, Chennai "D" Bench

2.The Income Tax Officer,
Ward-1(1)
Salem.

3. The Commissioner of Income Tax(Appeals) Salem 7.

+1 cc to Mr.M.Swaminathan, Advocate Sr.NO. 58317
Tax Case Appeal No.571 of 2017

vbm(CO)
A.SK(03.01.2022)