IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

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

Tax Case Appeal No.581 of 2017

B.K.Muralikrishna ... Appellant

Vs.

Commissioner of Income Tax 9,
121, Mahatma Gandhi Salai,
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 "D" Bench, dated 22.04.2016 passed in C.O.No.102/Mds/2015. Against the order of the Commissioner of Income Tax Appeals 5 Chennai 34, dated 20.03.15 in ITA.NO.134/13-14 in the assessment year 2007-08, against the order of the Assistant Commissioner of Income Tax Chennai-6 dated 31.12.09 PAN:AFAPM2381R in the assessment year 2007-08.

For Appellant : Ms.N.V.Lakshmi
for Mr.N.V.Balaji

For Respondent : Mr.T.Ravi Kumar,
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 22.04.2016 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai ('the Tribunal' for brevity) in C.O.No.102/Mds/2015 for the Assessment Year 2007-08. The assessee has raised the following Substantial Question of Law for consideration:

> " 1) Whether under the facts and circumstances of the case the Income Tax Appellate Tribunal was right in upholding the additions made by the assessing officer in respect of purported excess stock?
>
> 2)Whether based on material before it, the Tribunal could have come to the conclusion that at the time of there was excess stock available, that

the same was correctly valued and is to be assessed as income of the appellant?

3)Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the addition of Rs.16.50 lakhs in respect of property for purchase of property at Madhavaram?

4)Is the finding of the Tribunal that the appellant paid on money of Rs.16.50 lakhs for purchasing property at Madhavaram not perverse?

5)Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in upholding that addition of Rs.16.50 lakhs made by the Assessing Officer as money payment for purchase of land at Kannigai Village?

6)Is the finding of the Tribunal that the appellant paid on money of Rs.16.50 lakhs for purchasing land for his factory at Kannigai Village not pervers?

7)Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the additions made by the Assessing Officer merely based on the sworn statement made by the assessee during survey?

8)Whether under facts and circumstances of the case, the Tribunal was right in remitting the issue of disallowance under Section 40A(3) of the Act to the file of the Assessing Officer for fresh consideration?

9)Is the finding of the Tribunal that the facts do not show any compelling business reasons or exigencies for the payment of expenditure in cash not perverse?"

2. We have heard Ms.N.V.Lakshmi, learned counsel for the appellant/ assessee and Mr.T.Ravi Kumar, learned 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 has already filed the declaration on 07.12.2020 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 a declaration 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 Questions of Law are left open. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax 9,
121, Mahatma Gandhi Salai, Chennai - 600 034.

3.The Assistant Commissioner of Income Tax,
121,Mahatma Gandhi Salai, Chennai-34.

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MG(CO)
CB(12/02/2021)