IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

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

Tax Case Appeal No.731 of 2017

N. Rajasekaran ... Appellant

v.

The Income Tax Officer,
Ward 5, Door No.6T,,
North Cotton Road,
Tuticorin - 628 001. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "A" (SMC) Bench, Chennai dated 31.05.2017 passed in I.T.A.No.1446/Mds/2016 for the assessment year 2009-10, Appeal filed against the order dated 23-02-2016 made in ITA.No.003/2015-16 on the file of the Commissioner of Income Tax(Appeals)-1 Madurai for the assessment year 2009-10 against the order dated 09.03.2015 made in PAN No.ABLPR2690B on the file of the Income Tax Officer ward-5, Thoothukudi for the assessment year 2009-10 against the order dated 29.12.2011 made in PAN/GIR No.ABLPR2690B on the file of the Income Tax Officer, ward I(4) North cotton Road, Tuticorin for the assessment year 2009-10.

For Appellant : V.S. Jayakumar

For Respondent : Ms.V. Pushpa
Standing Counsel

J U D G M E N T
(Judgment was 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 31.05.2017 passed by the Income Tax Appellate Tribunal, "A" (SMC) Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.1446/Mds/2016 for the assessment year 2009-10.

2. The appeal was admitted on 22.12.2017 on the following Substantial Questions of Law:

> " (i) Whether the Tribunal was right in law in holding that the reassessment made under section 147 is valid in law, especially when the pre conditions laid down in that section have not been fulfilled by the Revenue to justify the reassessment? and
>
> (ii) Whether the Tribunal's order is perverse in law on the finding of facts which are not borne out by record especially when the Commissioner of Income Tax (Appeals) has dealt with all aspects relating to the addition made and jurisdiction under section 147 read with section 145(2) of the Income Tax act, 1961i?"

3. We have heard V.S. Jayakumar, learned counsel for the appellant and Ms.V. Pushpa, learned Standing Counsel for the respondent.

4. 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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

5. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Form - 1 on 28.12.2020 under Section 4 of the Act.

6. . 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 requisite Form - 1 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.

7. With these observations, 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(CS-VI)

//True Copy//
Sub Assistant Registrar

Rj

To

1. The Income Tax Appellate Tribunal,
Chennai “A” (SMC) Bench .

2. The Income Tax Officer,
Ward 5, Door No.6T,,
North Cotton Road,
Tuticorin - 628 001.

3.The Income Tax Officer,
Ward I(4),
North Cotton Road,
Tuticorin-628 001.

+1cc to Mr.M.Swaminathan, Advocate SR.6397
+1cc to Mr.V.S.Jayakumar, Advocate SR.6005

Tax Case Appeal No.731 of 2017

GMR(CO)
CB(05/03/2021)