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.807 of 2017

Durai Sathyamurthy ... Appellant

Vs.

The Dy. Commissioner of Income Tax,
Corporate Circle - 6(2),
122, Nungambakkam High Road,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, "B" Bench, Chennai, dated 09.03.2017 passed in I.T.A.No.3028/Mds/2016 for the assessment year 2012-13, against the Commissioner of Income Tax(Appeals)-15, No.221,121 M.G.Road, Nungambakkam, Chennai -34, ITA.No.153/CIT(A)-15/ 2015-2016 dated of order 29/08/2016 against the Deputy Commissioner of Income Tax Corporate Circle 6(2), 7th Floor Wanaparathy, Block Room No.705, 121 M.G.Road, Chennai -34, PAN.No.AAMPS6003R, assessment year 2012-2013.

For Appellant : Mr.V.S. Jayakumar
For Respondent : Mr.J. Narayanaswamy
Senior 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 09.03.2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.3028/Mds/2016 for the assessment year 2012-13.

2. The e assessee has raised the following Substantial Questions of Law for consideration:

*" (i) Whether on the facts and in the circumstances of the case the Tribunal is right in its interpretation of Section 45 read with Section 48 to hold that the sum of Rs.25 lakhs representing the expenditure for the purpose of improvement of the land is not allowable even though the same is covered by terms of the MOU entered into between the parties? and*

*(ii) Whether the Tribunal is right in its conclusion which are based on perverse findings of facts which amounts to mere suspicion, surmise and conjecture ?"*

3. We have heard V.S. Jayakumar, learned counsel for the appellant and J. Narayanaswamy, learned Senior 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 23.01.2021 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

/True Copy/

Sub Assistant Registrar

To

1. The Income Tax Appellate Tribunal,
   Chennai "B" Bench .

2. The Deputy Commissioner of Income Tax,
   Corporate Circle - 6(2),
   122, Nungambakkam High Road,
   Chennai - 600 034.

3. The Commissioner of Income Tax(Appeals),
   Chennai.

4.The Deputy Commissioner of Income Tax
   Corporate Circle 6(2), Chennai.

Copy to : The Sub-Assistant Registrar, A.E.Section,
High Court of Madras, Chennai-104.

+1cc to M/s.V.S.Jayakumar, Advocate SR.No.6003

akm/5.3.21 /3p-7c/

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