IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2021

CORAM

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

Tax Case Appeal No.826 of 2017

Saroj Vinod Kumar Jain ... Appellant

v.

The Principal Commissioner of Income Tax 9,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 08.03.2017 passed in I.T.A.No.2348/Mds/2016.

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

For Respondent : Mr.T. Ravikumar
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 08.03.2017 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.2348/Mds/2016 for the Assessment Year 2008-09.

2. The appeal was admitted on 06.03.2018 on the following substantial questions of law:-

> *" (i) Whether the Tribunal erred in law in treating the gains on sale of shares as short term capital gains instead of long term capital gains by taking into account the date of dematerializaton of shares and not the date of purchase there of?*
>
> *(ii) Whether the the finding of the Tribunal on the sale transaction entered into by the appellant not being genuine, is vitiated by perversity ?"*

3. We have heard Ms. N.V.Lakshmi, learned counsel for the appellant/assessee and Mr.T. Ravikumar, learned Standing Counsel for the respondent/Revenue.

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 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the declaration on 22.12.2020 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 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.

7. 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.

(M.D.,J.) (T.V.T.S.,J.)
20.01.2021
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Index : Yes/No
Internet : Yes
Rj

To

1. The Principal Commissioner of Income Tax 9,
   121, Mahatma Gandhi Road,
   Nungambakkam, Chennai.

2. The Income Tax Appellate Tribunal,
   Madras 'B' Bench,
   Chennai

M. DURAISWAMY, J.
and
T.V. THAMILSELVI, J.

Rj

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