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.855 of 2017

N.Easwaran ... Appellant

Vs.

Commissioner of Income Tax,
Coimbatore. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 26.10.2016 passed in I.T.A.No.2117/Mds/2016 and against the order passed by the Commissioner of Income Tax(Appeals)-3, Coimbatore, dt.29/04/2016 made in IT Appeal No.94/15-16 and against the order passed by the Income Tax Officer, Ward2(2), Tirupur dt.27/03/2015 made in PAN/GIR.No.AAGPE4276L for Assessment year 2012-13.

For Appellant : Mr.Kumar,
for Mr.T.N.Seetharaman

For Respondent: Ms.K.G.Usha Rani, Standing Counsel,
for Mr.T.R.Senthil Kumar,
Standing Counsel

J U D G M E N T
(Delivered by T.V. THAMILSELVI, 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 26.10.2016 passed by the Income Tax Appellate Tribunal, Chennai “A” Bench ('the Tribunal' for brevity) in I.T.A.No.2117/Mds/2016 for the Assessment Year 2012-13. The assessee has raised the following Substantial Question of Law for consideration:

“ 1) Whether the Appellate Tribunal is right in law in not following the binding judgment of the jurisdictional Madras High Court in CIT Vs.S.Khader Khan Son (2008) 300 ITR 157 (Mad) affirmed by the

Supreme Court by order in CIT Vs. S.Khader Khan Son (2013) 352 ITR 480 (SC) and relying on judgments of other High Courts in a manner contrary to judicial propriety and discipline?

2)Whether the Appellate Tribunal is right in law in acting on the retracted confessional statement of the appellant, uncorroborated by tangible material, which has no evidentiary value and is also against the CBDT instructions on the subject?

3)Whether the Appellate Tribunal is right in law in reversing the fair and reasoned order of the Commissioner (Appeals) fixing the income with reference to comparable cases and restoring the Assessing Officer's order adopting exaggerated rate of profit?"

2. We have heard Mr.Kumar, learned counsel for the appellant/ assessee and Ms.K.G.Usha Rani, 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

//True Copy//

Sub Assistant Registrar

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To

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

2.Commissioner of Income Tax,
Coimbatore.

3.The Commissioner of Income Tax(Appeals-3
Coimbatore.

4.The Income Tax Officer,
Ward 2(2)
Tirupur.

+1cc to Mr.T.R.Senthil Kumar, Advocate SR.3215

Tax Case Appeal No.855 of 2017

CB(04/02/2021)