IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

TAX CASE APPEAL NO.869 OF 2017

M/s.Tidel Park Ltd.,
4, Rajiv Gandhi Salai,
Taramani,
Chennai - 600 113. ... Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle - III (2),
now Corporate Circle - 3(1),
Chennai - 600 034. ... Respondent

PRAYER:-

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 19.02.2016 passed in I.T.A.No.1403/Mds/2014.

Prayer in T.C.A.No.870 of 2017:-

Against the Order of the Commissioner of Income Tax (Appeals)-III, 121, Mahatma Gandhi Road, Chennai - 600034, dated 24/03/2014, I.T.A.No.1447/2013-2014, PAN No.AABCT0666R for the Assessment Year 2006-2007 and against the Assistant Commissioner of Income Tax, Company Cirle-III(2), Chennai-600034, G.I.R.No./ PAN.AABCT0666R, Status-Company, Method of Accounting-Mercantile for the Assessment Year 2006-2007.

For Appellant : Mr.Vikram Vijayaraghavan
For M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mrs.V.Pushpa
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 19.02.2016 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.1403/Mds/2014 for the assessment year 2006-07. The appellant/assessee has raised the following substantial questions of law in the above appeal:

> “1.Whether the Tribunal was right in law in holding that the reopening of the assessment under Section 147 was valid?
>
> 2.Whether the Tribunal was right in law in not holding that the reopening of the assessment was only on a change of opinion on the same set of facts which were available with the Assessing Officer at the time of the original assessment?
>
> 3.Whether the Tribunal was right in law in not holding that in the absence of tangible material, reopening of assessment under section 147 was only a change of opinion?
>
> 4.Whether the Tribunal was right in law in not following the decision of the Hon'ble Supreme Court in CIT vs.Kelvinator of India Ltd 320 ITR 561 and holding that the reopening of the assessment was not valid?
>
> 5.Whether the Tribunal was right in law in holding that the assessee is not entitled to deduction u/s.80IA in respect of interest income and other income which are directly related to the business of Software Technology Park?
>
> 6.Whether on the facts and circumstances of the case, the Tribunal was right in law in restricting the claim of deduction u/s.80IA when the entire income was derived only from developing, running and maintaining of Software Technology Park (STP) which was approved by the Department of Industrial Policy & Promotion and notified by the Central Board of Direct Taxes in terms of Sec.80IA(4)(iii) of the Act r/w. Rule 18C of the IT Rules and hence no part of the same can be excluded while computing the relief under Section 80IA?”

2. We have heard Mr.Vikram Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel appearing for the appellant/

assessee and Mrs.V.Pushpa, 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 had already been issued with Form-3 on 29.04.2021 and the learned counsel for the appellant seeks permission of this Court to withdraw the appeal.

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 the appeal pending. At the same time, 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, is to be safeguarded. Accordingly, the Tax Case Appeal stands dismissed as withdrawn on the ground that the assessee has already been issued with Form-3 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 the 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, these Tax Case Appeal stands dismissed as withdrawn 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. The Income Tax Appellate Tribunal,
   Madras "D" Bench.

2. The Assistant Commissioner of Income Tax,
   Company Cirlce - III (2),
   Now Corporate Circle - 3(1),
   Chennai - 600 034.

3. The Commissioner of Income Tax (Appeals)-III,
   121, Mahatma Gandhi Road,
   Chennai - 600034.

+1cc to M/s.Subbaraya Aiyar, Advocate, S.R.No.33791
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.33804

TAX CASE APPEAL NO.869 OF 2017

AD(CO)
PBS/09/08/2021