IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

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

Tax Case Appeal No.97 of 2017

M/s.Tamil Nadu Industrial Development
Corporation Limited,
19A, Rukmani Lakshmipathy Road, Egmore,
Chennai - 600 008. ... Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle-III(2)
Chennai - 600 034
Presently the Income Tax Officer,
Non Corporate Ward - 19(4)
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, Madras "A" Bench, dated 05.01.2016 passed in I.T.A.No.610/Mds/2012 against the order of the commissioner of Income Tax(Appeals)-III, dated 01.12.2011 made in ITA No.117/2010-11/A-III against the order of the Assistant commissioner of Income Tax company circle-III(1), Chennai-600 034 dated 16.09.2010 made in GIR No./PAN.AAACT3409P/31035-T for the assessment year 2008-09.

For Appellant : Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar

For Respondent : Mrs.V.Pushpa Standing Counsel

J U D G M E N T
(Delivered by M. DURAISWAMY, J)

The appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity), is directed against the order, dated 05.01.2016, passed by the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai ('the Tribunal' for brevity) in I.T.A.No.610/Mds/2012 for the Assessment Year 2008-09. The appellant/assessee has raised the following Substantial Questions of Law in the above appeal :

> "1.Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the loss arising from write off of the investments made in the companies promoted by the assessee would constitute capital loss and not business loss?
>
> 2.Whether on the facts and in the circumstances of the case the Tribunal erred in not considering that the business of the assessee consisting of promoting companies and loss arising from investment in such promoted companies would constitute business loss and capital loss?
>
> 3.Whether on the facts and in the circumstances of the case the Tribunal erred in not following the ratio of the decision of the co-ordinate Bench in assessee's own case for the earlier years where realisation from investments in promoted companies where it was held to be business income?"

2. We have heard Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar, learned counsel 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 17^{th} March 2020 and published in the Gazette of India on 17^{th} March 2020.

4. We are informed by the learned counsel for the appellant/assessee that the assessee has already filed the requisite Forms 1 & 2 on 19.11.2020 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 the 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 the requisite Forms 1 & 2 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, 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 VIII)

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Income Tax Appellate Tribunal, Madras "A" Bench

2.The Assistant Commissioner of Income Tax
Company Circle-III(2)
Chennai - 600 034
Presently the Income Tax Officer,
Non Corporate Ward - 19(4)
Chennai - 600 034.

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

+1cc to Mr.M.SWAMINATHAN, ADVOCATE, SR.NO. 20965
+1cc to Mr.SUBBARAYA AIYAR,ADVOCATE, SR.NO. 20972

Tax Case Appeal No.97 of 2017

CP(CO)
KKN 28.04.2021