

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

T.C.A.No.510 of 2019

K.Balasubramaniam

Appellant

Versus

Commissioner of Income Tax,
No.3, Gandhi Road, Salem – 636 007

Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 24.09.2009 made in I.T.A.No.659/Mds/2009 relating to the Assessment Year 2003-04.

For Appellant : Mr.T.Vasudevan

For Respondent : Ms.V.Pushpa
Junior Senior Standing counsel

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal has been filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity), challenging the order dated 24.09.2009 passed by the Income Tax Appellate Tribunal, Chennai, 'D' Bench ('the Tribunal' for brevity) in I.T.A.No.659/Mds/2009 for the Assessment Year 2003-04. This appeal was admitted on 25.07.2019 on the following Substantial Questions of Law:

“1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the addition of Rs.19,48,400/- as unexplained investment of the assessment year 2003-04 when, even as per the Assessing Officer, the impounded books show only advances of Rs.3,14,500/- in this year?

2. Whether the order of the Tribunal confirming the addition was perverse, especially in the context of reliance on books impounded in survey, which show the cumulative balance of advances over the years as of Rs.19.48 lakhs and not as advances pertaining to this year alone?

3. Whether the Tribunal was justified in confirming the addition based on the impounded books recording the advances till 13.1.2003, which are part of the regularly maintained books of accounts and hence, the cumulative

balance of advances cannot be added as the unexplained investment? And

4. Whether the Tribunal was justified in confirming the addition when it admits that addition was not made on the basis of statement but on the basis of impounded books, which forms part of the regularly maintained books of accounts?"

2. We have heard Mr.T.Vasudevan, learned counsel appearing for the appellant/assessee and Ms.V.Pushpa, learned Junior Standing counsel for the respondent/Revenue.

3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No.I.

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. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an

Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

सत्यमेव जयते

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be 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.

8. In the light of the above, we direct the appellant / assessee to file the Form No.I and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.

9. With this direction, the Tax Case Appeal stands disposed of with the aforementioned liberty and Consequently, the Substantial Questions of Law are left open. No costs.

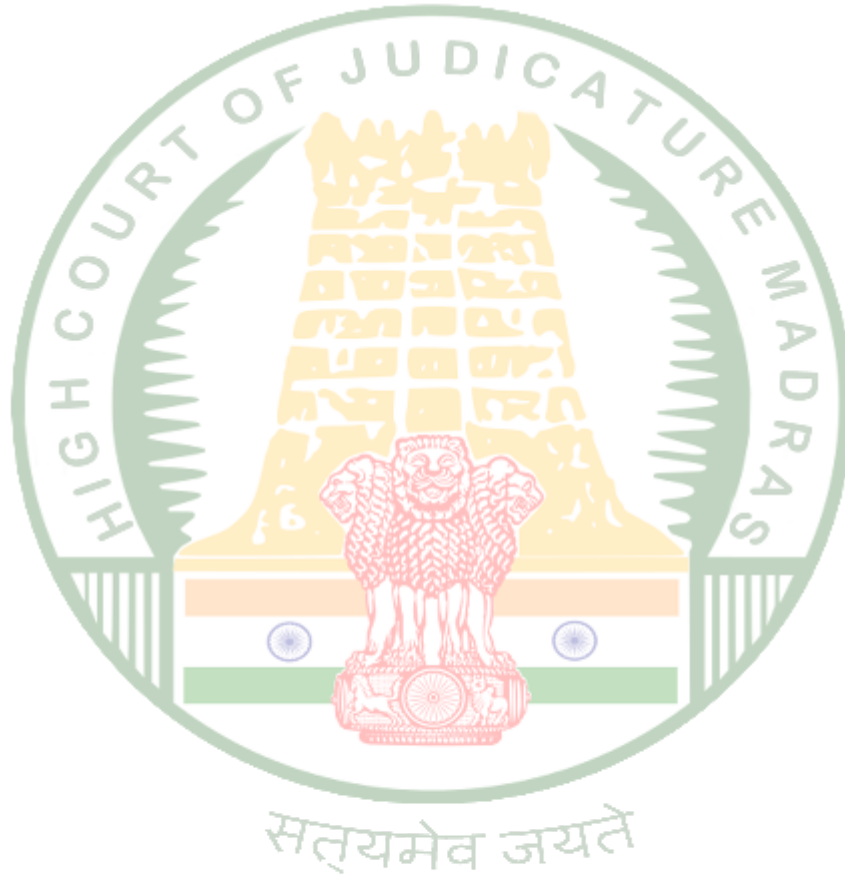
(T.S.S.,J) (V.B.S.,J)

22.12.2020

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Index: Yes / No
Internet: Yes / No
Speaking Order/Non-Speaking Order
To

The Income Tax Appellate Tribunal,
'D' Bench, Chennai.



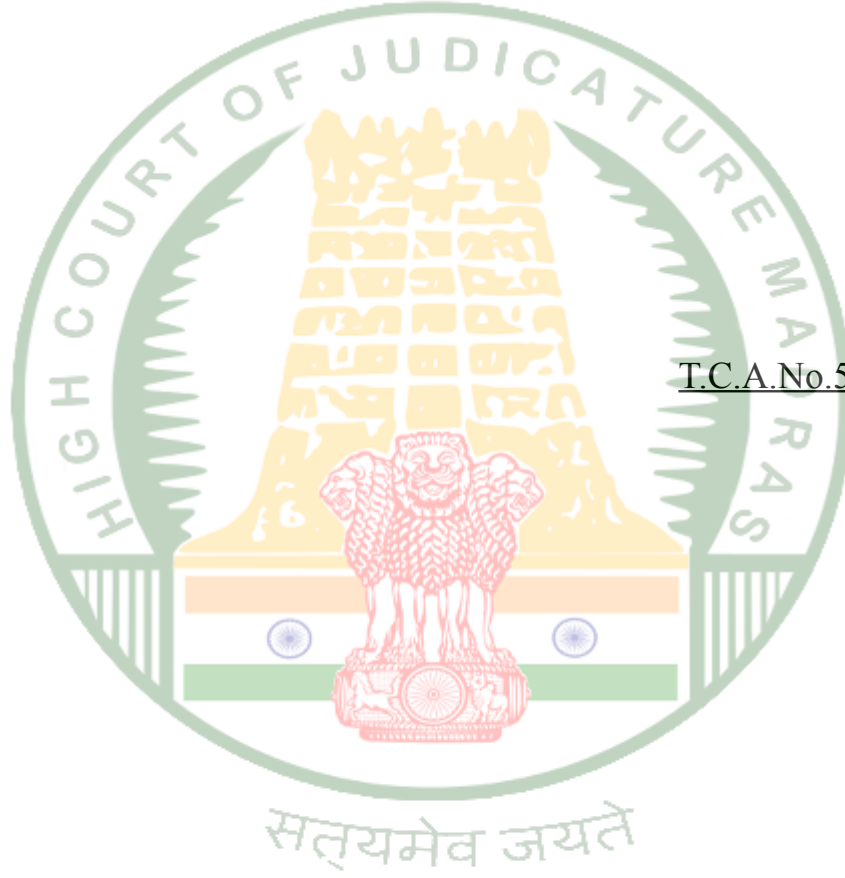
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