

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.440 of 2021

M/s.Fenner (India) Limited,
No.3, Madurai Melakkal Road,
Kochadai,
Madurai – 625 016.

... Appellant

Vs.

The Addl. Commissioner of Income Tax,
Range I,
Madurai.

... Respondent

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 25.02.2013 passed in I.T.A.No.1023/Mds/2012.

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

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
and Ms.V.Pushpa
Standing Counsel

JUDGMENT

(Judgment was delivered by **T.S. SIVAGNANAM, 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 25.02.2013 passed by the Income Tax Appellate Tribunal, Madras "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.1023/Mds/2012 for the assessment year 2002-03. The appellant/assessee has raised the following substantial questions of law in this appeal :

“1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the royalty income received for providing know-how, secret formula manufacturing process and methods in respect of goods manufactured by the subsidiary and exported by the assessee is not eligible for deduction u/s.80HHC of the Act?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that 90% of the royalty receipts should be excluded from the profits of the business for the purpose of computation of deduction u/s.80HHC of the Act?”

2. We have heard Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan, learned counsel appearing for the appellant/ assessee and Mr.M.Swaminathan, learned Senior Standing Counsel and Ms.V.Pushpa, learned Standing Counsel for the respondent/Revenue.

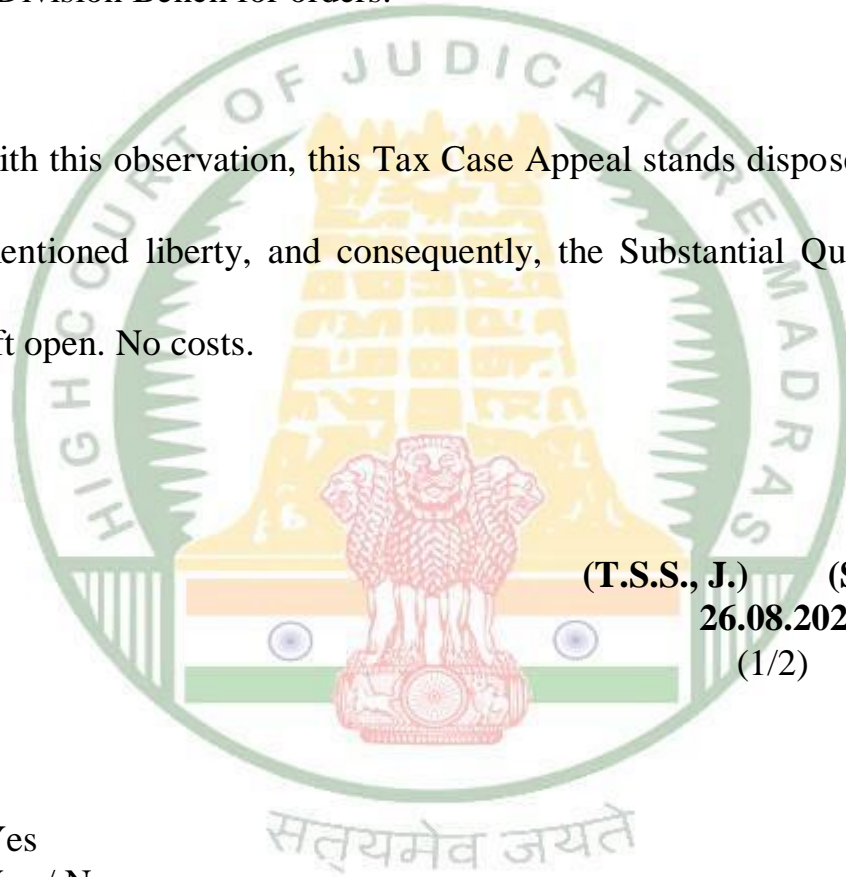
3. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the **Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020)** to provide for resolution of disputed tax and for 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 has availed the benefit of Vivad Se Vishwas Scheme and the assessee had already been issued with Form-3 on 13.01.2021.

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 disposed of 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, this 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.) (S.S.K., J.)
26.08.2021
(1/2)

mkn

Internet : Yes

Index : Yes / No

To

1. Income Tax Appellate Tribunal, Madras "D" Bench

2. The Additional Commissioner of Income Tax,
Range I,
Madurai.

Tax Case Appeal No.440 of 2021

T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP.

J. mkn



Tax Case Appeal No.440 of 2021

WEB COPY

26.08.2021
(1/2)