In the High Court of Judicature at Madras

Dated : 20.4.2015

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The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Ms.Justice K.B.K.VASUKI

T.C.A.No.189 of 2015

Commissioner of Income Tax,
Chennai. ...Appellant / Respondent

Vs

Ms.Vidya Thangakumar ...Respondent / Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 5.9.2014 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, for the assessment year 2009-2010, made in ITA No.1081/Mds/2014.

against the order of the Commissioner of Income Tax, Chennai X , Chennai-34 dated 7.2.2014 and made in C.No.6502(75) 2013-14/X Which was filed against the order of the Income Tax Officer, Business Ward -V(4) Chennai-34 dated 16.12.2011 and made in PAN AFEPV3371C.

For Appellant : Mr.S.Rajesh

Judgment was delivered by V.RAMASUBRAMANIAN,J

This tax case appeal is filed by the Revenue questioning the correctness of the order passed by the Income Tax Appellate Tribunal.

2. Heard Mr.S.Rajesh, learned counsel for the appellant.

3. The assessee, who is the respondent, is an individual. She filed a return of income for the assessment year 2009-2010 on 31.7.2009, admitting a total income of Rs.1,04,880/-. Later, the case was taken up for scrutiny. After verifying the books of accounts, bank statement and property documents, the Assessing Officer passed an order under Section 143(3) of the Income Tax Act, accepting the return of income vide order dated 16.12.2011.

4. The Commissioner of Income Tax later issued a show cause notice under Section 263, on the ground that the property, which the

assessee got by way of settlement, was sold by her over a period of three years to various persons in the form of undivided share and that therefore, the income derived therefrom was a business income. The assessee filed objections. However, the Commissioner of Income Tax considered the objections, set aside the assessment and directed the Assessing Officer to treat the income from the property transaction as business income instead of capital gains.

5. As against the said order of the Commissioner of Income Tax dated 7.2.2014, the assessee filed an appeal in I.T.A.No.1081/Mds/2014 before the Income Tax Appellate Tribunal. The Tribunal, by order dated 5.9.2014, allowed the appeal, holding that the assessee was actually a full time student undergoing MBBS course and that she is not indulging in any business activity and it was a case of change of opinion. Aggrieved by the said order of the Tribunal, the Revenue is on appeal before us.

6. The main contention of the learned counsel for the Revenue is that merely because the assessee was a student, the Tribunal ought not to have come to the conclusion that she could not have indulged in any business activity. It is also contended that whenever a property acquired by someone is sold in bits and pieces, after collecting the development charges with a view to make a profit out of the same, the same can be treated as business income as per the law laid down by the Supreme Court in Raja Rameshwara Rao Bahadur Vs. CIT [1961 (42) ITR 179 (SC)].

7. We have carefully considered the above submissions.

8. It is not as though the Tribunal merely went by the fact that the assessee was a full time student undergoing MBBS course and that therefore, she could not have indulged in any business activity. It was one of the reasons adduced by the Tribunal for coming to the conclusion that it did.

9. A careful look at the order of the Tribunal would show that the assessee got the property by way of settlement. Thereafter, she entered into a promoter's agreement on 18.12.2007 and a construction agreement on 30.3.2008. It was in pursuance of those agreements that the assessee was compelled to sell undivided shares in the land, over a period of three assessment years namely 2008-09, 2009-10, etc. The assessee also filed a return of income for the assessment year 2008-09 under the head 'long term capital gain'.

10. Therefore, the Tribunal rightly concluded that the transaction of sale of undivided shares in the land merely started crystallizing from the assessment year 2008-09 onwards and what is important is that the Revenue accepted the stand of the assessee. Therefore, it was clearly a case of change of opinion and it is now

well settled that on the basis of the change of opinion, the power under Section 143(3) cannot be invoked.

11. In so far as the second ground is concerned, it is true that in Raja Rameshwara Rao Bahadur, the Supreme Court held that when a person acquired the land with a view to selling it later after developing it, he is carrying on an activity resulting in profit and the activity can only be described as a business venture. But, the case on hand stands on a different footing. The assessee did not acquire any land for the purpose of development and sale as part of any business venture. She got this property by way of a settlement and she merely wanted to sell it. The better method of selling it was found to be to entrust it to a developer. Once an agreement for sale is entered into in the manner in which a developer wanted, there is no way the assessee would have had control over the period of time, within which, the entire transaction would have been concluded. Therefore, this is not a fit case calling for our interference.

12. Accordingly, the above tax case appeal is dismissed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Income Tax Appellate Tribunal,
Madras 'D' Bench.

2. The Commissioner of Income Tax
Chennai X, Chennai

3. The Income Tax Officer
Business ward V (4) Chennai-34

1 cc to Mr.J. Narayanasamy, Advocate, Sr. 21651

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