IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE MR.JUSTICE **R.KARUPPIAH**

Tax Case (Appeal) No.1052 of 2007

The Commissioner of Incometax
Tiruchirapalli. .. Appellant

versus

N.Arumugam
No.32B Nadu Street
Varaganeri, Trichy.
.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 13.02.2007 made in I..T.A..No.326/Mds/2006 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the assessment year 2001-2002.

For appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

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

<u>J U D G M E N T</u>

(Judgment of the Court was delivered by **R.SUDHAKAR,J.)**

This Tax Case (Appeal) filed by the Revenue as against the order of the Income Tax Appellate Tribunal was admitted by this Court on the following substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the gains arising from sale of land is not business profit and liable only to be assessed under capital gains?
>
> 2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that disallowance of development expenses is to be charged only on Rs.2.00 lakhs even after holding that there were no proper vouchers and bills for the same?"

2. The brief facts of the case are as follows:

The assessment in this case relates to the assessment year 2001-2002. The assessee purchased 1.35 acres of agricultural land in the year 1993 for a sum of Rs.1.12 lakhs and developed the property as housing plots. During the assessment year under consideration, the assessee sold 21 plots for a consideration of Rs.19,52,390/- and offered the said profit earned as long term capital gains. During the completion of scrutiny assessment, the Assessing Officer took the view that the assessee was in the line of real estate business and has been consistently receiving income from real estate business for the past six years and therefore, the activity of the assessee cannot be taken as income from long term capital gains, but from real estate business. Hence, the Assessing Officer held that the profit earned from housing plots was income earned from business. Aggrieved by the said order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, despite the decision of the jurisdiction High Court in the case of ***CIT V. Mohammed Mohideen*** reported in ***176 ITR 393,*** came to conclusion as follows:

> *"4. The next issue relates to the income from real estate businesses and disallowance of expenditure under this head. It was observed by the Assessing Officer that the assessee had purchased 1.35 acress of land on 11.02.2003 for Rs.1,12,000/-. This plot of land was developed and carved into plots for housing and assessee had sold 21 such plots for a sum of Rs.19,52,390/-. The appellant had claimed that this profit is a long term capital gains. The appellant relied on the decisions of CIT Vs. M.L.M.Mahalingam Chettiar*

(deceased) (1977) 107 ITR 236, CIT Vs. Sairam 242 ITR 104, CIT Vs. Nathalal Dhayabhai 126 ITR 555, CIT Vs.Dhananjay Roy Jadhav 137 CTR (MP) 129. In addition reliance was also placed on 62 ITR 578, 176 ITR 393, 142 ITR 115 and 45 IR 626. I have perused the facts of the case and I find that the ratio of the above mentioned cases do not apply to the present case. I find that the appellant was in the business of arranging buyers and sellers for commission purposes for the purchase and sale of lands/plots. I also find the assessee was consistently engaged in dealing in properties (may be as a commission broker) and in the context of the facts of the case and attendant circumstances of the case it is clear that the appellant had acquired this property with intention to develop this property and sell it for profit. I agree with the finding that developing the property by filling sand and gravel, levelling and marking it into plots clearly have all the indica of well thought out business activity in the real estate. This organised and systematic nature of the dealings gives away the real intention of the appellant. I have no doubt that activity was in the nature of adventure in the nature of trade and business."

3. Therefore, the Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer. As against the said order of the Commissioner of Income Tax (Appeals), the assessee pursued the

matter before the Tribunal.

4. The Tribunal taking note of the fact, namely, sale of 21 plots in the assessment year 2001-2002, nearly after 7 years from the date of purchase, i.e., 1.1.1993 and following the decision of this Court in the case of ***CIT V. Mohammed Mohideen*** reported in ***176 ITR 393***, held the issue in favour of the assessee.

5. Aggrieved by the order of the Tribunal, the Revenue is before this Court.

6. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

7. We find that neither in the assessment order nor in the order of the Commissioner of Income Tax (Appeals) there is any material to show that the assessee is engaged continuously in the business of purchasing and selling of land with or without development, as has been observed by the Commissioner of Income Tax (Appeals) in paragraph 4 of the order, which we extracted supra. A solitary instance of purchase in the year 1993, development and plotting out

in the assessment year 2001 cannot partake the character of business venture or profit.

8. In the case of ***CIT V. Mohammed Mohideen*** reported in ***176 ITR 393***, this Court following the decision in the case of ***CIT Vs. Kasturi Estates (P) Ltd.*** reported in ***(1966) 62 ITR 578 (Mad)***, held as follows:

> *"A sale of immovable property may possible be a trading or commercial transaction, but need not necessarily be so... If a land-owner developed his land, expended money on it, laid roads, converted the land into house sites and with a view to get a better price for the land, eventually sold the plots for a consideration yielding a surplus, it could hardly be said that the transaction is anything more than a realisation of a capital investment or conversion of one form of asset into another. Obviously, the surplus in such a case will not be trading or business profits because the transaction is one of realisation of assets in investment rather than one in the course of trade carried on by the assessee or an adventure in the nature of trade."*
>
> *We are of the view that even in this case, the same position holds good as there is no material to indicate that the assessee ever intended to indulge in any trading activity."*

9. Following the above-said decision of this Court, we find that there is no material to show that the assessee is carrying on any business in real estate. Accordingly, we have no hesitation to confirm the order passed by the Tribunal. Consequently, this Tax Case (Appeal) stands dismissed. No costs.

Index: Yes / No (R.S.,J.) (R.K.,J.)
Internet: Yes / No 25.02.2015

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To

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

R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.

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