In the High Court of Judicature at Madras

Dated : 14.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal Nos.675 & 676 of 2017
& CMP.No.17564 of 2017

The Commissioner of Income Tax,
Non Corporate Circle 10(1), Chennai. ...Appellant in both TCAs

Vs

Shri P.N.Thiagarajan ...Respondent in TCA.No.675/2017

Smt.P.T.Geetha Ramani ...Respondent in TCA.No.676/2017

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 31.1.2017 made respectively in ITA.Nos.2385 and 2384/Mds/2016 on the file of the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the assessment year 2010-11.

TC(A) 675 & 676/2017:

Appeal against the order passed by the commissioner of Income Tax (Appeals)-12, 121 Mahatma Gandhi Road, Chennai 34, dated 31.05.2016 in ITA.Nos.73/CIT(A)-12/2013-14, ITA.NO.74/CIT (A)-12/2013-14, for the assessment year 2010-11, against the order passed by the Joint Commissioner of Income Tax Business Range XV(I/C), Chennai, dated 17/03/14 and 1413/14 in GIR.NO/PA.NO.AA.DPT1455B, and ALWPG5281G for the assesment year 2010-11 respectively.

For Appellant : Mr.M.Swaminathan and Ms.V.Pushpa

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

Heard the learned Senior Standing Counsel for the Revenue.

2. These appeals have been filed by the Revenue raising the following substantial questions of law :

"i. Whether the Tribunal is right in holding that the transfer of property has taken place in the assessment year 2009-10 relying on an unregistered sale agreement whereas the actual sale deed was registered in the assessment year 2010-11 ?

ii. Whether the Tribunal was right in upholding that the transfer of impugned property took place in assessment year 2009-10 without considering the provisions of Sections 53A read with 17(1A) of the Transfer of Property Act, 1882 as amended in 2001 ?

iii. Whether the Tribunal is right in holding that the capital gain is assessable only in assessment year 2009-10 even though the agreement and power of attorney holder has disclosed commission income from the sale of asset vide sale document dated 27.4.2009 ? and

iv. Whether the Tribunal was right in holding that the word 'assessable' was introduced only with effect from 01.10.2009 and hence, Section 50C is not applicable in this case though the property has already been assessed by the stamp valuing authorities through sale deed dated 27.4.2009 prior to insertion of the word 'assessable' ?"

3. Before we go into the aspect as to whether the above questions of law arise for consideration, we are required to take note of the following facts:

The Revenue filed appeals before the Tribunal against the orders passed by the Commissioner of Income Tax (Appeals) deleting the disallowance of long term capital gains for the assessment year 2010-11 where transfer took place in the financial year 2008-09 as per the unregistered sale agreement dated 23.7.2008. The Revenue contended that the Commissioner of Income Tax (Appeals) erred in applying the provisions of Section 2(47)(vi) of the Income Tax Act, 1961 read with Section 53A of the Transfer of Property Act and holding that the assessees had given possession to the purchaser whereas the property was in the possession of M/s.Voltas Limited on a long lease and overlooked the judicial decisions irrespective of the fact that the transfer took place only on the date of registration of the sale deed on 27.4.2009.

4. The assessees filed the return of income for the assessment year 2010-11 disclosing the total income of Rs.14,32,470/- and Rs.1,94,230/- and the assessments were

reopened by issuing notices under Section 148 of the Income Tax Act. The assessees submitted a letter requesting the Assessing Officer to treat the return of income filed earlier as their reply. The assessees, who are two in number, are co-owners of the property along with 18 co-owners, who had leased out the property to M/s.Voltas Limited for a period of 30 years from 1975 onwards. The original owner of the property was one Mr.P.N.Chettiar and after his demise, his legal heirs are said to have executed a power of attorney in favour of one Mr.S.Saravanan, who, in turn, executed the sale deed dated 27.4.2009 in favour of the purchaser of the property.

5. In the reopening proceedings, the Assessing Officer found that these facts were not disclosed in the return of income, which aspect was explained by the assessees stating that they had entered into an agreement dated 23.7.2008, though the sale deed was executed by the power of attorney holder on 27.4.2009. The Assessing Officer applied the provisions of Section 50C of the Income Tax Act and came to the conclusion that the assessees sold the property during the financial year 2009-10 irrespective of the fact that possession was given to the purchaser based on the sale agreement dated 23.7.2008 for a consideration of Rs.3,07,55,400/- and was of the opinion that the transfer took place in the assessment year 2010-11 and that capital gains are taxable in the hands of the assessees and accordingly, two orders were passed respectively dated 17.3.2014 and 14.3.2014.

6. Aggrieved by such orders, the assessees preferred appeals before the Commissioner of Income Tax (Appeals) reiterating the stand, which they had taken before the Assessing Officer. The Commissioner of Income Tax (Appeals) considered the sale agreement and also the transaction, which took place in the financial year 2008-09 and held that the assessees received the full sale consideration though the property was registered by the power of attorney holder in 2009. After considering the provisions of Section 2(47) of the Income Tax Act and Section 53A of the Transfer of Property Act and the decision of this Court in the case of D.Kasthuri Vs. CIT [reported in (2010) 323 ITR 40], it was held that the capital gains arose to the assessees on the basis of the sale agreement between the vendor and the vendee and applied the provisions of Section 2(47)(v) of the Income Tax Act and the transfer is complete in all aspects.

7. The Tribunal noted the findings rendered by the Commissioner of Income Tax (Appeals) in paragraph 32 of its order and held that the observation of the Commissioner of Income Tax (Appeals) that the assessee had complied with the provisions in the financial year 2008-09 and paid capital gains and that there were no long term capital gains taxable in the assessment year 2010-11 to be just and proper. The above finding rendered by the Tribunal is on re-appreciation of the factual position as recorded by the Commissioner of Income Tax (Appeals). In respect of other co-owners, similar orders were

passed by the Commissioner of Income Tax (Appeals) and they had attained finality, as the Revenue did not prefer appeals against those orders. In the light of the above factual position, we are of the considered view that the above questions framed by the Revenue stating to be the substantial questions of law would not arise for consideration in these appeals, as the entire matter is fully factual. There is no error of law committed by the Tribunal warranting interference by this Court.

8. Accordingly, the above tax case appeals are dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Income Tax Appellate Tribunal, 'B' Bench, Chennai.

2.The Commissioner of Income Tax,
(Appeals-12)
121 Mahatma Gandhi Road.
Chennai 34

3.The Joint Commissioner of Income Tax
Business Range XV(I/C)
Chennai.

+2cc to Mr.M.Swaminathan, Advocate sr.89447

TCA.Nos.675 & 676 of 2017
and CMP.No.17564 of 2017

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