In the High Court of Judicature at Madras

Dated : 21.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.720 of 2017

The Commissioner of Income Tax,
Ward-5, Virudhunagar. ...Appellant

Vs

M/s.P.R.Venketarama Raja (HUF) ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.5.2017 made in ITA.No.3179/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2011-12.

Against the order of the commissioner of Income Tax (Appeals)-3, Madurai, dated 29.03.2016 made in PAN No.AAAHV5302A, and Assessment Year 2011-12, against the order of the Assistant Commissioner of Income Tax, Circle-I, Virudunagar, dated 26.02.2014, made in PAN/GIR No.AAAHV5302A/2011 - 2012.

For Appellant : Mr.M.Swaminathan

Judgment was delivered by T.S.SIVAGNANAM,J

Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue.

2. This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench in ITA.No.3179/Mds/2016 dated 30.5.2017 for the assessment year 2011-12, raising the following substantial questions of law :

> "i. Whether the Income Tax Appellate Tribunal was right in law in holding that the benefit of exemption under Section 54F/54 of the Income Tax Act cannot be denied even though the investment in purchase/construction of new asset was not made in the name of the assessee - HUF, but in the name of the Karta in his individual capacity ? and

ii. Whether the Income Tax Appellate Tribunal is correct in not considering the fact that the investment in purchase of new asset was not made within one year before the date of transfer of original assets (i.e 23.9.2010) as stipulated in the provisions of Section 54F/54 since the impugned investment was made on 12.12.2008 only and therefore, was not eligible for exemption under Section 54F/54 ?"

3. With regard to the first question, the objection raised by the Revenue is that the property was sold by the HUF when the property was purchased in the name of the individual.

4. This aspect of the matter has been elaborately considered by the Commissioner of Income Tax (Appeals) and a finding has been recorded to the effect that it is seen that the funds for the purchase of new property has come from the bank account of the assessee in the capacity of HUF and not from his individual capacity. The Commissioner of Income Tax (Appeals) further noted that even though the purchase deed of the property as well as the agreement for construction of the new residential property with M/s.Ramcons show the name of Mr.P.R.Venketarama Raja, the legal position is that the assessee can enter into the purchase and sale of any property of the HUF in the capacity as the Kartha of the HUF. This finding has been further elaborated by the Commissioner of Income Tax (Appeals) in paragraph 13.2 of the order.

5. Thus, we find, on facts, that the Tribunal was justified in dismissing the appeal filed by the Revenue on the first question. Hence, we find that the first substantial question of law does not arise for consideration in this appeal, as the issue entirely revolves around the facts.

6. With regard to the second question, we find that the Tribunal, after considering the entire matter, remanded the matter to the Assessing Officer to be decided afresh on merits. The finding rendered by the Tribunal for justifying the order of remand is found to be just and proper. Thus, we find that the second substantial question of law also does not arise for consideration.

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

8. It is well open to the Assessing Officer to take into consideration of the facts on the issue remanded to him.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal,
Chennai 'A' Bench.

2. The Commissioner of Income Tax,
(Appeals-3)
madurai.

3. The Assistant Commissioner of Income tax ciricle - I,
Virudunagar.

+1cc to Mr.M.SWAMINATHAN, Advocate, S.R.No. 92311/17

TCA.No.720 of 2017

BR(CO)
TR(17/01/2018)