

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS. JUSTICE J. UMA DEVI

I.T.T.A.No. 211 of 2017

JUDGMENT: (*Per VRS,J*)

The Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961, raising the following substantial questions of law:

- 1) In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in setting aside the issue to the Assessing Officer with a direction to verify the correctness of the claim of the respondent-assessee, with regard to agricultural nature of land is not perverse considering that it is crystal clear from the assessment order that what were sold were only house plots and not agricultural land? and*
- 2) In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is justified in setting aside the issue to the Assessing Officer, without appreciating that the respondent-assessee has admitted without any ambiguity vide his letter dated 3-10-2006 and other documents filed before the Assessing Officer that the agricultural lands inherited by him have been converted into house sites from assessment year 2003-2004 itself?*

2. Heard Mr. B. Narasimha Sarma, learned senior standing counsel for Income Tax Department, appearing for the petitioner.

3. The respondent/assessee sold his land in the form of house site plots. He filed his return of income for the assessment year 2006-2007, admitting a total income of Rs.44,000/-.

4. The case was selected for scrutiny and notices under Section 143(2) were issued. Thereafter, an order of assessment was passed on 12.03.2008, invoking Section 50C.

5. The appeal filed by the respondent/assessee was partly allowed by the Commissioner (Appeals), holding that the addition of Rs.21,71,560/- claimed as deduction towards cost of improvement, was not proper.

6. The assessee as well as the Revenue filed two independent appeals. Both the appeals were allowed by the Tribunal for statistical purposes and the matter remanded back for a fresh consideration on only one question, namely, whether the sale of the land was actually of an agricultural one or not. Aggrieved by the said order, the Revenue is before us.

7. At the outset, it should be pointed out that the order of the Tribunal under appeal is dated 21.09.2012. Though the appeal was filed in October, 2012 itself, there was a delay in re-presentation which we condoned.

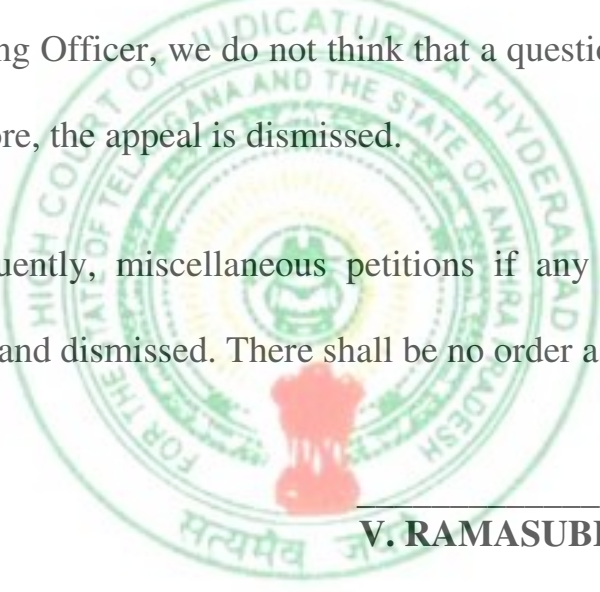
8. The main grievance of the Revenue, as projected by the learned senior standing counsel, is that before the appellate authority, a new ground was taken for the first time by the assessee that the land was an agricultural land. Therefore, according to the learned senior standing counsel, the Tribunal should not have entertained such a new

plea on facts, contrary to what was admitted before the Assessing Officer.

9. We have carefully considered the above submissions.

10. All that the Tribunal has done is only to remand the matter back to the Assessing Officer for a fresh consideration on this question of fact. As a matter of fact, the Commissioner (Appeals) also remanded the matter back for re-computation of the capital gains, after deleting the addition. When a question of fact is remanded to be adjudicated, to the Assessing Officer, we do not think that a question of law would arise. Therefore, the appeal is dismissed.

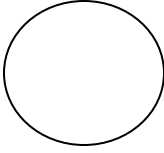
Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. There shall be no order as to costs.



V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

17th April, 2017
cbs



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