IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.1977 of 2008

Commissioner of Income Tax,
Central II, Chennai-600 034 .... Appellant

-vs-

Shri D.Sri Hari Rao,
6, Ranjith Road,
Kotturpuram,
Chennai-600 085 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'A' Bench, dated 14.05.2008 in IT(SS) A.No.137/Mds/2007, for the Block Period 01.04.1996 to 02.01.2003.

For Appellant : Mr.T.R.Senthilkumar
Mrs.K.G.Usha Rani

For Respondent : Mr.R.Venkata Narayanan for
M/s.Subbaraya Aiyar Padmanabhan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal, filed by the appellant/Revenue, under Section 260-A of the Income Tax Act, 1961 (The 'Act' for brevity), is directed against the order passed by the Income Tax Appellate Tribunal, Chennai 'A' Bench, in IT(SS) A No.137/Mds/2007, for the Block Period 01.04.1996 to 02.01.2003.

2.The Appeal has been filed by the Revenue, raising the following Substantial Questions of Law:

> *"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) holding that the Central Public Works Department rates were not applicable in the matter of estimation of the cost of construction without considering the detailed reasons given by the District Valuation Officer without giving an opportunity to him and without considering the location of the property within the Metropolitan city limits?*

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the addition of agricultural income should be reduced by the agricultural income to the extent disclosed in the returns prior to the date of search, disregarding the relevant evidence in the form of a certificate of the Village Administrative Officer regarding the agricultural income and the facts like the non-maintenance of accounts for agricultural income by the assessee and the evidence pertaining to the generation of unaccounted income in the assessee's family business as a result of the search conducted?

3.Heard Mr.T.R.Senthilkumar and Mrs.K.G.Usha Rani, the learned counsel for the appellant and Mr.R.Venkata Narayanan for M/s.Subbaraya Aiyar Padmanabhan, the learned Counsel for the respondent.

4.So far as the first Substantial Question of Law is concerned, the same stands answered against the Revenue and in favour of the assessee in the case of the **Commissioner of Income Tax vs. Raya R.Govindarajan [(2014) 89 CCH 0207 ChenHC**. In the said case, the Hon'ble Division Bench held that where the State P.W.D. was authorised to give valuation for all constructions in the State of Tamil Nadu and when the property was in the State of Tamil Nadu, the Income Tax Department should give credence to the valuation of the State P.W.D. in relation to the value of construction in comparison to valuation by Central P.W.D., more so, when there was no specific notification or circular indicating that CPWD rate alone should be adopted in arriving at the cost of construction. In our considered view the Tribunal rightly granted 15% discount on the total cost of construction as estimated by the Valuation Officer. The order passed by the Tribunal being in consonance with the law laid down in the case of **Raya R.Govindarajan,** the order calls for no interference. Accordingly, the Substantial Question of Law No.1 is answered against the Revenue.

5.With regard to the Substantial Question of Law No.(2) is concerned, the same is squarely covered by the decision of the Division Bench of this Court in the assessee's son's case in **Commissioner of Income Tax, Central-II, Chennai vs. Shri D.Venkatesh (Tax Case (Appeal) No.1913 of 2008, dated 05.01.2009)**. The Division Bench pointing out that the assessee has disclosed the agricultural income in the regular assessment and therefore, in the absence of any valid material to prove the contrary, the amount, which was disclosed in the returns, well prior to the search, cannot be treated as undisclosed income for the purpose of making block assessment. Thus, the Second Substantial Question of Law is also answered against the Revenue.

In the result, the appeal filed by the Revenue is dismissed. No costs.

[T.S.S., J.] **[N.S.K., J.]**

msk **15.11.2018**

Index:Yes/No

To

1.The Income Tax Appellate Tribunal Madras 'A' Bench.

T.S.Sivagnanam, J.
and
N.Sathish Kumar,J.

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