IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.8.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Tax Case Appeal No.433 of 2018

Principal Commissioner of Income Tax 2
No.63, Race Course Road
Coimbatore. ... Appellant/Respondent

Vs.

V.K.Subramaniam ... Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 17.01.2018 in ITA No.1853/Mds/2017, preferred against the order dated 15/6/2017 made in Appeal No.25/2016-17 in the Office of the Commissioner of Income Tax (Appeals)-3, Coimbatore preferred against the order dated 31.3.2016 for the Assessment Year 2013-2014 in PAN NO.DUSPS7433E on the office of Income Tax Officer(i/c) Ward 2(2) Erode.

For Appellant : Mr.T.R.Senthil Kumar
Standing Counsel

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Madras Madras 'C' Bench, Chennai, dated 17.01.2018 in ITA No.1853/Mds/2017, by raising the following substantial questions of law:

> "(i) Whether the Appellate Tribunal was right in holding that the land in question, which was admittedly non-agricultural land in the form of pond, was an agricultural land within the meaning of Section 2(14)(ii) of the Income Tax Act, 1961 and therefore on sale thereof, tax on capital gains

resulting therefrom was not leviable, for the mere reason that the land was registered as agricultural land in the revenue records?

(ii) Whether the Appellate Tribunal was right in allowing the assessee's ground which was an alternate claim made before the CIT(A) thus rendering that, the asset in question was an agricultural land, without appreciating that the assessee himself in his returned income had treated the asset as an asset not being an agricultural land?

(iii) Whether the ITAT was justified in holding that admittedly the land was an agricultural land without appreciating the decision of the Apex Court in 204 ITR 631 Sarifabibi Mohammed Ibrahim and other and that of the jurisdictional ITAT Chemmancherry Estates Co. wherein it was held that the land is not agricultural, even though it was entered in the revenue record as agricultural land?

(iv) Whether the ITAT was correct in allowing the alternative claim made by the assessee before the CIT(A) by holding that the Revenue had not been able to dislodge the facts or evidence produced by the assessee, when the same were not produced before the Assessing Officer?

(v) Whether the ITAT was justified in rendering a perverse finding holding that the transferred asset is not subject to capital gain when the assessee himself has admitted the transfer to capital gain as the land in question was in the form of pond and was not a plain agricultural land and that the photographs relied upon by the ITAT showing that the land was plain agricultural land in contrary to the material on record as the assessee himself had admitted the land was in the form of fond? And

(vi) Whether on the facts and circumstances of the case, the ITAT could rely on the photo and hold the land to be agricultural land thus rendering a perverse finding?"

2. When the matter is taken up for admission, the learned Standing Counsel brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular

No.3/2018 dated 11.7.2018 wherein it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.50 lakhs.

3. In the instant case, the tax effect is less than the monetary limit imposed and therefore, the appeal is dismissed as not pressed, preserving the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kpl

1.The Registrar,
Income Tax Appellate Tribunal
Madras 'C' Bench, Chennai.

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

3.The Income Tax Officer,
(i/c) Ward 2(2), Erode.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.55930

TCA No.433 of 2018.

rsi[co]
srg 18/09/2018