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.438 of 2018

The Commissioner of Income Tax
Chennai. .. Appellant

Vs.

Amudha Anandh .. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 06.12.2017 in ITA No.3358/Mds/2016, against the order of the Commissioner of Income Tax (Appeals)-2, Chennai dated 30.09.2016 in ITA No.68/CIT(A)-2-2015-16 against the order of the Income Tax Officer, Non Corporate Ward-1(1), R.No.305 III Floor, Wanaparthy Block, Aayakar Bhavan, Chennai-34 dated 31.03.2015 made in PAN No.AABPA2471Q and against the order of the Commissioner of Income Tax, Chennai-IV, Chennai-34, dated 29.4.2013 made in C.No.47(3)/264/CIT IV/2013-14.

For Appellant : Mr.T.Ravi Kumar
Senior 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 'B' Bench, Chennai, dated 06.12.2017 in ITA No.3358/Mds/2017, by raising the following substantial questions of law:

"(i) Whether, the Tribunal was right in holding that the amended provisions of Section 50C(1) of the Income Tax Act which was applicable with effect from 01.4.2017 are applicable to the impugned transaction which took place in previous year relevant to the assessment year 2010-11 as per registered sale deed?

(ii) Whether the Tribunal was right in holding that the transaction has been taken place as per Section 2(47)(v) of the I.T Act read with Section 53A of the Transfer of Property Act especially when no evidence had been placed by the Assessee with regard to the sale agreement or any contract entered indicating the transfer of property existed and a registered power of attorney was sufficient evidence for holding deeming transfer of the property as per Section 53A of the Transfer of Property Act?

(iii) Whether the Tribunal ought to have applied the judgment of the Hon'ble Supreme Court in the case of Suraj Lamp and Industries Ltd. vs. State of Haryana and another reported in 340 ITR page 1 wherein it had been held any contract of sale which was not a registered sale deed would fall short of requirements of the relevant provisions of law of Transfer of Property Act and could not confer any title and that the transfer of property by way of sale could be only through a sale deed and in the absence of deed of conveyance (duly stamped and registered as required by law) no right, title or interest in an immovable property could be transferred especially when in the present case no sale agreement had been entered between the land owners and the power of attorney holders? and

(iv) Whether the Tribunal ought to have applied the decision of the Apex Court in the case of Shri Balbir Singh Maini in Civil Appeal No.15619 of 2017 (arising out of SLP (Civil) No.35248 of 2018) to the facts of the present case being similar in nature?"

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. The learned Standing Counsel appearing for the appellant has been authorised, by letter dated 26.7.2018, to withdraw the appeals in view of revised monetary limit. In the instant case, the tax effect is less than the monetary limit imposed, namely Rs.26.46 Lakhs and therefore, the learned counsel sought to withdraw this appeal.

4. In view of the above, this appeal is dismissed as withdrawn, preserving the substantial questions of law for determination in an appropriate case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

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

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

3.The Income Tax Officer,
Non-Corporate Ward-1(1) R.No.305 III Floor,
Wanaparthy Block, Aayakar Bhawan,
Chennai-34.

4.The Commissioner of Income Tax,
Chennai-IV,
Chennai-34.

TCA No.438 of 2018.

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srg 5/10/2018