IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

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THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Tax Case Appeal No.284 of 2018

The Commissioner of Income tax,
Chennai. ... Appellant

-vs-

Mrs.Jayasathya Suresh,
Ambojini Poes Road, 2nd Street,
Teynampet, Chennai-600 018. ... Respondent

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 21.09.2017 made in ITA No.2932/Mds/2014 against the order of the Commissioner of Income Tax (Appeals-V), Chennai 34 in ITA No.199/13-14(A)-V dated 19.08.2014 for the Assessment Year 2010-11 and against the order of Assistant Commissioner of Income Tax Business Circle-XV, Chennai 34, dated 14.03.2013 in PAN NO.AEWPJ9922L for the Assessment year 2010-11.

For Appellant : Mr.T.Ravikumar,
Standing Counsel

JUDGMENT

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(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 'B' Bench, Chennai, dated 21.09.2017 made in ITA No.2932/Mds/2014, raising the following substantial questions of law:

"(i)Whether the claim under Section 54 of the Income Tax Act is to be allowed even when the

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expenditure incurred were only on repairs, service maintenance and interior decoration on two floors which were already built in the assessment year 2007-08 and had already been assessed to property tax by the Corporation?

(ii)Whether the Tribunal was right in allowing the claim of the assessee especially when the assessee herself had admitted vide submission dated 20.02.2013 that the Corporation assessment for the entire property in respect of ground floor, 1st, 2nd and 3rd floors of the residential building was already done for the first time during the 2nd half of the FY 2007-08 itself which would clearly show that the construction of the property was already completed, before or during the assessment year 2007-08 itself?

(iii)Whether the finding of the Tribunal that the amount of Rs.1.20 Crores that had been paid to Real Value Promoters out of the sale consideration of the assessee's flat for construction is to be allowed, especially when the amount spent by Real Value Promoter after the date of transfer was only Rs.3,12,825/- which would clearly show that the completion certificate issued by the Builder cannot be relied upon, since assessee's husband is Director in the said company and had vested interest in that company?

(iv)Whether the Tribunal was right in allowing the claim of the assessee under Section 54 especially when the ledger accounts produced clearly indicate that the payments made to the parties were in the nature of providing home theater, security services, decoration services, facility management services, interior decoration, generator maintenance services, lift services, swimming pool maintenance, A/C maintenance charges which are all in the nature of mere services to enhance the life style in a dwelling and are not for making the residence habitual?"

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2.When the matter is taken up for admission, the learned Standing Counsel appearing for the appellant brought to our notice the Circular instruction issued by the Central Board of Direct Taxes vide Circular No.3/2018 dated 11.07.2018 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.

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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. No costs.

Sd/-
Assistant Registrar(CS VI)

//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 (Appeal-V),
Chennai-34.

3. The Assistant Commissioner of Income Tax Business Circle-XV,
Chennai-34.

4. The Commissioner of Income Tax, Chennai.

Copy To:
The Assistant Registrar,
Income Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besand Nagar, Chennai-90.

+1 cc to Mr.T.Ravikumar, Advocate Sr.No.75607

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RJ(CO)
CSL/29.11.2018

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