IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.1008 of 2008

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

-vs-

Mr.M.Parthasarathy HUF,
45, First Avenue,
Shastri Nagar, Adyar,
Chennai-600 020. ... Respondent

Tax Case (Appeal) filed under Section 27-A of the Wealth Tax Act, 1957 against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai dated 05.08.2005 in W.T.A.No.9/Mds/2004 for the assessment year 1995-96 against the order of the Commissioner of Wealth Tax (Appeals)VIII Chennai dated 20.10.2003 and made in WT/Appeal No.1/2003-2004 for the Assessment year 1995-1996.

Against the order of the Assistant Commissioner of Wealth Taxx Circle IV, Chennai 34 dated 26.03.2003 and made in PAN/GIR No. 2207 for the Assessment year 1995-1996.

For Appellant : Mr.T.R.Senthil Kumar,
Senior Standing Counsel
assisted by Mrs.K.G.Usha Rani,
Junior Standing Counsel

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

JUDGMENT
[Delivered by T.S.Sivagnanam, J.]

This appeal, by the Revenue, is directed against the order passed by Income-tax Appellate Tribunal, "A" Bench, Chennai dated 05.08.2005 in W.T.A.No.9/Mds/2004 for the assessment year 1995-96.

2.This appeal has been admitted on 30.07.2018 on the following substantial questions of law:-

"(i) Whether or not, when the difference between the unbuilt area and the specified area exceeds 20% of the aggregate area, the assessing officer is bound to follow Rule 3 of Schedule III of the Wealth Tax Act for the valuation of the immovable property?

(ii) When the difference between unbuilt area and specified area exceeds 20% of the aggregate area, would not it be with the discretion of the assessing officer to compute valuation of the property under Rule 20 of the Schedule III of the Wealth Tax Act?"

3.We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.Venkat Narayanan, learned counsel for the respondent/assessee.

4.The learned Senior Standing Counsel appearing for the appellant submitted that there is no dispute as regards the legal position regarding the applicability of Schedule III with regard to valuation of the property for the purposes of the assessment under the Wealth-tax Act. However, the Tribunal did not decide as to whether Rule 20 of III Schedule to the Wealth-tax Act will be applicable as against the finding of the Commissioner of Wealth Tax or that Rule 3 of III Schedule to the Wealth-tax Act is applicable.

5.We find that a specific ground has been canvassed by the Revenue before the Tribunal, but the Tribunal has not dealt with the same.

6.The learned Senior Standing Counsel for the Revenue placed reliance on the decision of the Division Bench of this Court in the case of Commissioner of Wealth-tax vs. VGP Housing (P) Ltd. ([2009] 176 Taxman 273), wherein somewhat identical issue arose for consideration and the grievance of the Revenue was that the Tribunal had given only a specific direction to the Assessing Officer to apply only Rules 3, 4 and 5 and the Division Bench held that there was no restriction for the Assessing Officer to apply the relevant Rules for determining the value of the immovable property and hence, the apprehension of the Revenue had no basis. It was made clear that it is for the Assessing Officer to apply Rules 3, 4 and 5 and if he feels the same was not practicable to apply, he is at liberty to invoke Rule 8 or 20 and determine the value of assets in accordance with Schedule III of the Wealth-tax Act. The operative portion of the judgment reads as follows:-

"8.The apprehension of the revenue is that the Tribunal had given only a specific direction to the Assessing Officer to apply only rules 3, 5 and 5. On a complete reading of Schedule III, the irresistible conclusion is that the

> Assessing Officer should consider and apply rules 3, 4 and 5, and if he is of the opinion that it is not practicable to apply the rules 3, 4 and 5, he could rely on rule 8 or rule 20 and the value of the property could be determined in the manner laid down under rule 8 or rule 20. Hence, there is no restriction for the Assessing Officer to apply the relevant rules for determining the value of the immovable property and hence the apprehension of the revenue has no basis and it is an imaginary one. We make it clear that it is for the Assessing Officer to apply first the rules 3, 4 and 5 and if he feels the same is not practicable to apply, he is at liberty to invoke rule 8 or rule 20 and determine the value of the assets in accordance with Schedule III of the Wealth-tax Act."

7.On a reading of the order passed by the Tribunal, we find that the specific issue raised by the Revenue has not been dealt with by the Tribunal. Therefore, we deem it fit and proper to remand the matter for fresh consideration.

8.Accordingly, the appeal is allowed, the impugned order is set aside and the matter is remanded to the Tribunal for fresh decision to decide as to whether Rule 20 of III Schedule to the Wealth-tax Act will be applicable as canvassed by the Revenue.

9.In the light of the above order, there will be no necessity to decide the substantial questions of law framed in this appeal. Accordingly, the appeal is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

abr
To
1.The Income-tax Appellate Tribunal, "A" Bench, Chennai.

2.The Commissioner of Income-tax
Chennai.

+1 CC to Mr.T.R. Senthil Kumar, Advocate sr 58737.
+1 CC to M/s. Subbaraya Aiyar, Advocate sr 59137.

T.C. (A) No.1008 of 2008

SV(CO)
SP(26/09/2018)