IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM :

The Hon'ble Mr.Justice T.S.Sivagnanam

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The Hon'ble Mr.Justice N.Seshasayee

Tax Case (Appeal) No. 915 of 2008

The Commissioner of Wealth-Tax,
Tamil Nadu - II, Madras. .. Appellant

Vs

M/s. T.N.K. Govindraju & Company Limited,
No.48, Anna Salai,
Chennai - 600 002. .. Respondent

Tax Case Appeal filed under Section 27-A of the Wealth Tax Act, 1957, against the order passed by the Income Tax Appellate Tribunal Madras 'D' Bench, dated 13.07.2000 in W.T.A.No.428/Mds/1995.

For Appellant : Mr. M. Swaminathan
For Respondent : No Appearance

Judgement

[Judgment of the Court was pronounced by **T.S.Sivagnanam,J**.]

Heard Mr. M. Swaminathan, the learned Senior Standing

Counsel appearing for the appellant/Revenue. Though the respondent/assessee has been served and their name was printed in the causelist, none appears for the respondent/assessee.

2. At the time, when the Tax Case Appeal was admitted, i.e., 14.07.2008, the following substantial question of law was framed for consideration:-

> Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in confirming the order of the Commissioner of Income Tax (Appeals) in directing the exclusion of the value of the theater complex as exempt under Section 40(3)(vi) of the Finance Act, 1983 ?

3. The learned Senior Standing Counsel for the appellant/Revenue contended that, mistake has occurred before the Commissioner of Wealth Tax (Appeals-I) [CWT(A)] as well as Income Tax Appellate Tribunal (ITAT, for brevity), which has led to the framing of substantial question of law, which does not arise for consideration in the assessee's own case for the earlier AYs 1984-1985 and 1985-86. Therefore, the learned Senior Standing Counsel has re-framed the issues, raising the following two substantial questions of law:-

i) Whether the Tribunal was right in holding that for the purpose of determining the market value of the property under wealth Tax only actual rent received should be taken without including the charges collected separately towards service and maintenance?

ii) Whether the Tribunal was right in holding that amenities do not form part of the rent for the purpose of valuing the property under Wealth Tax Act?

4. The assessment under the Wealth Tax Act was completed by the respondent under Section 16 (3) of the Act, by an order, dated 20.03.1995. The issue was with regard to the assessee's claim that, amenities do not form part of the rent for the purpose of valuing the property under rent capitalization method under Schedule III of the Wealth Tax Act. The assessee preferred Appeal before the CWT(A) who, by an order, dated 31.07.1995, partly allowed the assessee's Appeal following the order passed by the ITAT, in the assessee's own case for the earlier assessment year, viz., 1984-1985 and 1985-86. When the Revenue carried out the matter on Appeal to the ITAT, contending that

CWT(A) erred in holding that the charges received for amenities were not to be included as part of rent for the premises for the purpose of valuing the building on rent capitalization method, the ITAT dismissed the Appeal filed by the Revenue on the ground that in the asseesee's own case in respect of the earlier AY 1985-86, ITAT has held against the Revenue.

5. The learned Senior Standing Counsel for the appellant/Revenue points out that the question, which arises for consideration in the present case is, as per the re-framed substantial questions of law and not the question of law, which has been framed at the time of admission of this Appeal and the re-framed substantial questions of law were never the subject matter for consideration before the CWT (A) or before the ITAT, and therefore, prays that the matter may be remanded to the CWT(A) for fresh consideration.

6. On a perusal of the materials placed before this Court, we are *prima facie* satisfied that both the Appellate Authority as well as the ITAT have gone by the orders in the assessee's own case for the earlier AY 1984-1985 and 1985-86, where, the present re-framed substantial questions of law were not the issue in those years. For such reasons, we

are convinced that the matter should be remanded to the CWT (A) for fresh consideration on merits and in accordance with law.

7. Accordingly, the Tax Case Appeal is allowed, the impugned order is set aside, and the matter is remanded to the CWT (A) for fresh consideration to decide the following two issues along with the facts and circumstances of the case after notice to the assessee:-

> i) Whether for the purpose of determining the market value of the property under wealth Tax only actual rent received should be taken without including the charges collected separately towards service and maintenance?
>
> ii) Whether amenities do not form part of the rent for the purpose of valuing the property under Wealth Tax Act?

8. The Tax Case Appeal is allowed, as indicated above. No costs.

T.S.S.J., N.S.S.J.,

18.04.2018

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To

1. Commissioner of Wealth Tax (Appeals-I)
   Madras.

2. Income Tax Appellate Tribunal, 'D' Bench,
   Madras.

T.S.Sivagnanam,J.,

&

N.Seshasayee, J.,

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