IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.21431 of 2009

Mrs.Jayasree Balakrishnan ...Petitioner

--Vs--

1.The Secretary (Finance)
Ministry of Finance
North Block, New Delhi
2.The Director, (ITA-II)
Central Board of Direct Taxes,
North Block, New Delhi
3.The Chief Commissioner of Income Tax,
Income Tax Office,
67 A, Race Course Road
Coimbatore
4.The Commissioner of Income Tax II,
Income Tax Office,
67 A, Race Course Road
Coimbatore
5.The Deputy Commissioner of Income Tax,
Income Tax Buildings
Ooty, Nilgris-643 201 ... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorarified Mandamus, calling for the records on the file of the petitioner in F.No.225/149/2007-ITA-II on the file of the second respondent and quash the impugned order dated 22-12-2008 and consequently direct the fifth respondent to exempt and exclude the compensation awarded including enhanced compensation by the Local Government consequent to the compulsory acquisition of the agricultural Land from the computation of taxable income relating to the assessment years 1983-84 and 1988-89.

For Petitioner : Mr.E.Matin for M/s Pass Associates
For Respondents : Mr.A.N.R.Jaya Prathap - SC

O R D E R

The petitioner is an individual, assessed to income tax in terms of the provisions of the Income Tax Act, 1961 ('Act') by the Deputy Commissioner of Income Tax/R5. Certain lands owned by her appear to have been compulsorily acquired by the Government of Kerala giving rise to capital gains on the amount awarded as compensation.

2. The assessments of the petitioner for Assessment years (AY) 1983-84 and 1988-89 had been re-opened in terms of Section 147 of the Act, culminating in orders of re-assessment that came to be challenged before the Commissioner of Income Tax/R4 by way of a revision petition under Section 264 of the Act. The revision petition was disposed by R4 by order dated 25.07.1997, wherein interalia, R4 delved into the computation of capital gains, issuing certain directions to the Assessing Officer for re-working of the capital gains by grant of deduction under Section 48(2), adoption of proportionate interest for the year in question and spread over of the reminder to the relevant previous years and deletion of notional interest from the total income.

3. I refrain from referring to the details of the order passed by the Commissioner in revision petition in so far as they are not germane to the adjudication of the lis before me.

4. The order of revision has become final. Separately, penalty was levied by the authorities in terms of Section 271(1)(a) as well as 271(1)(c) of the Act that were challenged and ultimately cancelled by the Income Tax Appellate Tribunal by order dated 12.06.2006.

5. While this is so, the petitioner appears to have approached the Central Board of Direct Taxes (Board) by way of a petition dated 06.12.2006 under Section 119(2)(b) of the Act. The prayer of the petitioner before the Board was to the effect that the lands compulsorily acquired by the State of Kerala are located in a village and are agricultural in nature. Hence gain, if any, that arose out of such compulsory acquisition would not be liable to income tax.

6. The petitioner stated that the reliance of the Assessing Officer on a Notification issued was misconceived and that the Officer ought to have granted the benefit of a later Notification dated 06.01.1994 that had, in fact, superseded earlier notification dated 06.02.1973 relied on by the Officer.

7. In response to the aforesaid petition, the Board has passed the present impugned order dated 22.12.2008 regretting its inability to accept the claim of the petitioner as it was beyond the purview of Section 119 of the Act. It is as against the said order that the petitioner has filed the present writ petition.

8. Having heard Mr.E.Matin, learned counsel for the petitioner and Mr.A.N.R.Jaya Prathap, learned Standing Counsel, I am of the view that there is no legal infirmity in the impugned order passed by the Board. The liability to capital gains has been questioned by the petitioner in revision petition and the Commissioner of Income Tax has passed an order as early as on 25.07.1997, modifying the computation and granting some relief to the petitioner/assessee. This has admittedly, become final. Thus, there is no justification whatsoever for the petitioner to have approached the Board in terms of Section 119 and the conclusion of the Board to the effect that the relief sought for by the petitioner is not liable to be considered or granted is legally unassailable.

9. Moreover, the petitioner could well have sought the benefit of Notification dated 06.01.1994 even before the Commissioner in the course of hearing of the Section 264 petition. This was however not done.

10. In the light of the aforesaid discussion, I see no merit in the writ petition and dismiss the same. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.9728.

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adl/29.05.2020