IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.21043 OF 2015

C.K.Logadoss ... Petitioner

Vs.

1. The Commissioner of Income Tax – VIII,
   VI Floor, Kannammai Buildings,
   No.611, Anna Salai,
   Chennai – 600 006.

2. The Income Tax Officer,
   Business Ward – VIII (3),
   I Floor, Kannammai Buildings,
   No.611, Anna Salai,
   Chennai – 600 006. ... Respondents

Prayer:

Writ Petition is filed under article 226 of the Constitution of India, Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent in File No.C.No.861 (13)/CIT-VIII/2013-14 dated 18.07.2014 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondents : M/s.Hema Muralikrishnan

O R D E R

The petitioner had sold agricultural lands along with his brothers and sisters. One of the brothers namely C.K.Theerthagiri, who was a co-owner received a notice stating that he would be liable to pay tax.

2.The learned counsel for the petitioner has challenged in this writ petition, the order passed by the Commissioner of Income Tax under Section 264 of the Income Tax Act, 1956. The operative portion of the order reads as follows:-

"5.Considering the following facts the

petition deserves to be rejected.

(i) Assessee himself admitted LTCG in the return of income and hence there is no question of praying against her own claim.

(i) The verdict of 'B' bench of ITAT, Chennai on which petitioner relied upon has not been accepted but challenged in Madras High Court, and has not reached finality. Therefore the above verdict cannot be taken as precedent.

6.Considering the facts and circumstances as discussed above the prayer of the petitioner to give relief as in the case of Late CK.Ramachandran cannot be acceded to. Accordingly, the petition is disposed of by rejecting the request of the petitioner.

3.The learned counsel for the petitioner submits that the petitioner is 80 years old, who has sold agricultural land along with his brother and sisters, wherein, one of the brothers namely C.K.Theerthagiri was a co-owner. The respondent (Revenue) had proposed the tax C.K.Theerthagiri and C.K.Ramachandran, for long term capital gains. Since, the amount of sale consideration of the share between the brothers and sisters was not shown by the petitioner in his return, he filed a revised return under Section 139 of the Income Tax Act, on 13.12.2011, pursuant to which, the Assessment Order came to be passed by the 2nd respondent on 13.03.2013. It is further submitted that the case relating to the petitioner's brother and sisters were ultimately disposed by two separate orders in ITA No.1957/Mds/2013 dated 06.01.2014 for the Assessment year 2005-2006 and ITA No.2083/MDS/2013 dated 18.02.2014. These orders were challenged by the respondent(revenue) in Tax Case (Appeal) Nos.505 of 2014 and 686 of 2014. These appeals were dismissed in view of the litigation policy of the Government.

4.The learned counsel for the petitioner submits that the matter may be remanded back to the 1st respondent to pass a speaking order in terms of the decision of the Tribunal which were impugned in T.C.No.505 of 2014 and T.C.No.686 of 2014. The learned counsel for the respondent (Revenue) has no objection for the matter being remanded back to the 1st respondent to pass a speaking order in terms of the decision of the Tribunal in the case of the petitioner's siblings. The petitioner is aged 80 years as on the date of the filing Writ Petition. The Commissioner of Income Tax the 1st respondent is therefore requested to pass speaking order within a period of four weeks from the date of receipt of a copy of this order in accordance with law, taking note of the decision of the

Tribunal. Needless to state before passing such order, the petitioner shall be heard by the 1st respondent.

5.With the above directions, this Writ Petition stands disposed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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   Chennai - 600 006.

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   Chennai - 600 006.

+1cc to Mr.K.Soundararajan, Advocate, S.R.No.101254
+1cc to M/s.Hema Muralikrishnan, Advocate, S.R.No.100797

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CP(CO)
CS/11/02/2020