IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Tax Case Appeal No.268 of 2011

The Commissioner of Income Tax,
Chennai ... Appellant

-vs-

P.Ashok Kumar ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'D' Bench, dated 20.01.2011 in ITA No.1581/Mds/2010 for the assessment year 2007-08 against an order under section 143 (3) of the I.T.Act, dated 24.12.2009 passed by the DCIT, Circle I, Chennai against PAN/GIR No.AAFPK6994C.

For Appellant : Mrs.V.Pushpa

For Respondent : Mrs.Sree Lakshmivalli

J U D G M E N T

Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue is filed under Section 260A of the Income Tax Act, 1961 (for short the "Act") against the order dated 20.01.2011 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench in ITA No.1581/Mds/2010 for the assessment year 2007-08.

2. This Appeal has been admitted on the following Substantial Questions of Law:-

> "1. Whether on the facts and circumstances of the case, the Tribunal was right in treating the land sold by the assessee as an agricultural land falling outside the purview of the capital asset and consequently holding that the no capital gains tax is leviable on the sale of land?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that non cultivation of piece of land does not loose its character of agricultural land unless the user had specifically got changed the nature of the land?"

3. Heard Mrs.V.Pushpa, learned Standing Counsel for the appellant/Revenue and Mrs.Sree Lakshmivalli, learned counsel for the respondent.

4. The short issue which falls for consideration is whether the land which was sold by the assessee was an agricultural land or not. We need not labour much to answer the question since the first Appellate authority viz., the Commissioner of Income Tax (Appeals) (CIT (A)) as well as the Tribunal have made a thorough factual exercise and found that the land sold by the assessee was sold as an agricultural land. More importantly, the CIT (A) called for a remand report from the Assessing Officer as to the distance between the property in question and the outer limit of the notified municipality.

5. The Assessing Officer conducted inspection of the property in the presence of revenue officials and submitted a remand report, in which, it has been categorically stated that the land is situated at a distance of more than 8 kms away from the outer limits of St.Thomas Mount Cantonment Board. Thus, the remand report was taken into consideration by the CIT (A) as one of the factors for allowing the appeal filed by the assessee. Apart from that, CIT (A) also referred to the certificate issued by the Tahsildar and one of the important entry in the said certificate is by stating that the lands are classified as agricultural lands. Though the certificate may state that there is no cultivation carried on the lands as per the land records, there is nothing on record to show that the land in question was put to use for any non-agricultural purposes. Apart from that the assessee has also paid taxes which has been recorded by the CIT(A).

6. Thus, we are of the considered view that the concurrent

factual findings recorded by the first Appellate Authority and the Tribunal does not call for any interference. Hence, we are of the considered view that no substantial questions of law have arisen for consideration in this appeal. Accordingly, the appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

1. The Income Tax Appellate Tribunal 'D' Bench,
   Madras.
2. The Commissioner of Income Tax (Appeals)-VI,
   121, Mahathma Gandhi Road, Chennai 34.

3. The Deputy Commissioner of Income Tax,
   Circle-1, Chennai 34.

+1 cc to M/s.N.Muthukumar, Advocate Sr.No.230
+1 cc to M/s.M.Swaminathan, Advocate Sr.No.73

T.C.A.No.268 of 2011

RGN(CO)
CSL/03.04.2019