IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.8.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.204 of 2012

The Commissioner of Income
Tax, Central II, Chennai ...Appellant

Vs.

Shri.Sayarchand Nahar,
Chennai-18. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.2.2012 made in ITA.No.2140/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2006-07, against the order dated 20/09/2010 and made in ITA.Nos.230/07-08, on the file of the Commissioner of Income Tax (Appeals)-II, Chennai for the assessment year 2006-07 and against the order dated 31/12/2007, passed under section 153A read with section 143(3) of the I.T. Act 1961 on the file of the Deputy Commissioner of Income Tax, Central Circle II(1), Chennai.

For Appellant : Mr.T.R.Senthilkumar, SSC
assisted by Ms.K.G.Usharani, SC

For Respondent: Mr.J.Naresh Kumar

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.J.Naresh Kumar, learned counsel appearing for the respondent - assessee.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 16.2.2012 made in ITA.No. 2140/Mds/2010 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2006-07.

3. The appeal was admitted on 19.7.2012 on the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the urban land sold by the assessee falls within the meaning of capital asset as per Section 2 (14)(iii)(b) of the Income Tax Act during the relevant period 2005-06 ?
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> ii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in dismissing the Department's appeal without adjudicating ground No.1e viz. The learned CIT(A) has failed to note that the land in question was purchased at a cost of Rs.1,78,542/- in 1989, the transfer price was Rs.1,16,57,500/- during the financial year 2005-06 and that the adjoining property was also brought from his mother and developed into plots, which fact indicates that the land in question was not an agricultural land during the relevant previous year, raised by the Department before the Tribunal ?
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> iii. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the land is an agricultural land when the said land was developed along with the adjacent lands into plots, which fact indicates that the land in question is not an agricultural land during the relevant previous year ? And
>
> iv. Whether the Appellate Tribunal is right in observing that the assessee had shown agricultural income in its income tax returns when no such income is declared by the assessee in the return of income relevant to the assessment year 2006-07?"

4. The learned Senior Standing Counsel for the appellant submits that the above appeal is not pursued by the Revenue on account of the low tax effect in terms of Circular No.17/2019 dated 08.8.2019 issued by the Central Board of Direct Taxes. By the said Circular, the monetary limit for filing or pursuing an appeal before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5. In the light of the said submissions, the above tax case appeal is dismissed on account of the low tax effect. The substantial questions of law framed are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to make a mention to this Court to restore the appeal to be heard and decided on merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal,
Chennai 'D' Bench.

2.The Commissioner of Income Tax (Appeals)-II,
Chennai.

3.The Deputy Commissioner of Income Tax,
Central Circle II(1), Chennai.

+1 cc to Mr.T.R.Senthilkumar,Advocate Sr.No. 71737
+1 cc to Mr.J.Naresh Kumar, Advocate, Sr.No.71118

AKM/30.10.19/3P-6C /

TCA.No.204 of 2012