IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Nos.744 & 745 of 2018
CMP.No.16815 of 2018

Principal Commissioner of Income Tax 2,
No.63, Race Course Road,
Coimbatore ...Appellant in both the appeals

-vs-

M/s. B.Rangaswamy Naidu Orchards Pvt. Ltd,
No.14, Puliakulam Road, Coimbatore
(Now amalgamated with M/s.Gestione
Consulting India Pvt Ltd,
No.14 Vathiyaar Thottam,
Rambaiyalur, Chikkarasampalayam,
Sathyamanglam-638401
...Respondent in both the appeals

Tax Case Appeals under Section 260-A of the Income Tax Act, 1961, are directed against the order passed by the Income Tax Appellate Tribunal, Madras "B" Bench, in I.T.A Nos.343/Mds/2017 and 344/Mds/2017 dated 13.07.2017 for the assessment years 2012-13 and 2013-14. Appeals filed against the Orders of the Commissioner of Income Tax(Appeals)-3, Coimbatore, in ITA.No.191/16-17 and ITA.No.192/16-17 dated 18.11.2016 for the Assesment Year 2012-13 and 2013-14 against the orders of the Deputy Commissioner of Income Tax, Corporate Circle-2, Coimbatore, dated 26.03.2015 and 30.03.2016 for the Assessment year 2012-13 and 2013-14.

For appellant : Mr.K.G.Usha Rani
(in both the cases)

JUDGEMENT

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

These Tax Case Appeals by the Revenue, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) are directed against the order passed by the Income Tax Appellate Tribunal, Madras "B" Bench, in I.T.A Nos.343/Mds/2017 and 344/Mds/2017 dated 13.07.2017 for the assessment years 2012-13 and 2013-14.

2.The above Tax Case Appeals have been filed raising the following substantial questions of law:-

> "(i) Whether the ITAT was right in confirming the order of the CIT-A without appreciating that GCIPL acquired rights over the shares of the company held by Shri K Rajesh and Smt Srivally by virtue of clause 5 of the agreement dated 20-04-2007 by payment of a consideration of Rs.8,50,00,000/-?
>
> (ii) Whether the ITAT was right in confirming the order of the CIT-A holding that GCIPL acquired the land by payment of a compensation of Rs.8,50,00,000/- without appreciating that the CIT-A also held that the capital gains admitted in the hands of the original shareholders, Shri K Rajesh and Smt Srivally should be assessed as capital gains on sale of the shares?
>
> (iii) Whether the ITAT was right in holding that the payment made by the purchaser to the escrow agent was cost of improvement without appreciating that the payment made out of the sale consideration was towards settling of the loan borrowed by one of the directors, Shri Rajesh on 02-05-2008 after entering into an agreement for the sale of the land on 20-04-2007 and depositing the papers with the escrow agent, Shri Vikram Mohan after 20-07-2007?
>
> (iv) Whether the ITAT was right in holding that the payment made by the purchaser to the escrow agent was cost of improvement without appreciating that courts have held that where a property is held by an assessee free from encumbrances' and thereafter encumbrances' are created by the assessee is not entitled to deduction on account of encumbrances?
>
> (v) Whether the ITAT was justified in confirming the order or the CIT-A by holding that Rs.2,75,00,000/- was incurred for protecting, preserving and improving the title of land and hence the expenditure has to be allowed as part of the agreement by the then directors with Smt.P.Thillaikarasi, the assessee company had no

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liabilities.

(vi) Whether the ITAT was justified in confirming the order of the CIT-A by holding that GCIPL had borrowed and the interest incurred was on behalf of the assessee and as such the liabilities were incurred by GCIPL for improving, preserving/protecting the title and the interest paid is an allowable deduction without appreciating that these interest expenses and bank charges were incurred by GCIPL and these in no way are related with the conversion of capital asset into stock-in-trade and that the

(vii) Whether on the facts and circumstances of the case, the costs of improvements claimed by the assessee, allowed by the CIT-A and confirmed by the ITAT within the definition of cost of improvement under Section 55(1) of the IT Act"?

3. We have heard Mrs.K.G.Usha Rani, learned counsel for the Revenue in both the cases.

4. We have carefully gone through the orders of assessment for the assessment years under consideration namely 2012-13 and 2013-14 and the orders passed by the Commissioner of Income Tax (Appeals) and the orders passed by the Income Tax Appellate Tribunal.

5. The appeal was filed by the assessee before the CIT(A) disputing the computation of capital gains under Section 45(2) of the Act. The matter concerned an expenditure of Rs.8.5 Crores incurred by the assessee for making a property free from encumbrances. The CIT(A) took into consideration the factual aspects that the assessee had to pay a consideration of Rs.5.5 Crore to one Smt.Tillaikarasi to clear an encumbrance which was created in her favour. Therefore, an amount of Rs.2.75 Crore was paid to Mr.Vikram Mohan by the original shareholders of the assessee company Mr.K.Rajesh and Mrs.Srivalli. This was for the purpose of returning the original title deeds held by Mr.Vikram Mohan. Apart from that a sum of Rs. 2.74 Crore each was paid to Mr.K.Rajesh and Mrs.Srivalli outgoing shareholders. This expenditure incurred was held to be an eligible deduction for the purpose of preserving and protecting the title of the property. The factual aspect was tested by the Tribunal in great length and the appeal filed by the Revenue was rejected.

6. On going through contentions advanced before us, we find no question of law much less a substantial question of law arises for consideration in these appeals. For the above reasons

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these Tax Case Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

ska/mrm

1. The Income Tax Appellate Tribunal,
   Madras "B" Bench, Chennai.

2. The Commissioner of Income Tax(Appeals)-3,
   Coimbatore.

3. The Deputy Commissioner of Income Tax,
   Corporate Circle-2, Coimbatore.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.47292

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CMP.No.16815 of 2018

SS(CO)
CS/14/08/2019

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