IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.1.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal No.811 of 2017

The Commissioner of Income
Tax, Chennai ...Appellant

Vs

Smt.Mithra Ram ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 17.2.2017 in ITA No.3160/Mds/2016 on the file of the Income Tax Appellate Tribunal Madras 'C' Bench for the assessment year 2007-08.Appeal filed against the Order of the Commissioner of Income Tax (Appeals), Chennai - 34, in ITA No.64/15-16 Assessment year 2007-08 CIT/A4 dated 19.09.2016 in PAN BDER2205N against the Assessment year order u/s143 (3)read with section 147 for the Assessment Year 2007 - 08 in AAN BDEPR2205N dated 12.03.2015.

For Appellant : Mr.T.Ravikumar, SSC

For Respondent : Mr.Philip George

Judgment was delivered by T.S.SIVAGNANAM,J

Heard the learned Standing Counsel for the appellant.

2. This appeal by the Revenue challenges the order passed by the Income Tax Appellate Tribunal, which decided the issue in favour of the assessee. The appeal is filed by the Revenue by raising the following substantial questions of law :

> "i. Was it proper for the Tribunal in quashing the re-assessment order especially when the issue of reopening was not raised or agitated by the
>
> (2)
>
> assessee before the Commissioner of Income

Tax (Appeals) ?

ii. Is not capital gains chargeable as the assessee has admitted vide letters dated 06.10.2014 and 29.10.2014 stating that the impugned property was transferred on 15.12.2006 and the transaction would fall within the meaning of Section 53A of the Transfer of Property Act read with Section 2 (47)(v) of the Income Tax Act? And

iii. Is not the finding of the Tribunal bad especially when the assessee herself had admitted the sale consideration from sale of property was on 15.12.2006 at Rs.1,60,00,000/- in the computation of total income, which payment has also been confirmed by the purchaser M/s.K2 Engineers P. Ltd., vide their letter dated 06.8.2014 ?
"

3. The Revenue seeks to withdraw this appeal on account of low tax effect in terms of Circular No.3 of 2018 dated 11.7.2018 issued by the Central Board of Direct Taxes.

4. In the light of the above, the appeal is dismissed as withdrawn and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular under exceptional clauses mentioned in the 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.

RS

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal,
   Madras 'C' Bench, Chennai.

2. The Commissioner of Income Tax(Appeals)
   Chennai - 34.

3. The Income Tax Officer,
   Non - Corporate Ward 3(4),
   Chennai.

+1cc to Mr.Philip George, Advocate, S.R.No.371

T.C.A.No.811 of 2017

KS(CO)
KAK(21/02/2019)