IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM

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

Tax Case (Appeal) No.774 of 2018
and
C.M.P.No.18819 of 2018

Smt.Charumathy Seshadri ... Appellant/Respondent

-vs-

The Deputy Commissioner of Income Tax,
Non-Corporate Circle-15,
Chennai. ... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "C" Bench, Chennai, dated 09.10.2017, passed in I.T.A.No.886/Mds/2017 for the assessment year 2011-12, against the order of Deputy Commissioner of Income Tax, Chennai dated 13/3/2014 in BAYPS8008k/2010-11 and against the order of Commissioner of Income Tax (Appeals)-15, Chennai dated ITA No.186/CIT (A) 15/2014-15/Assessment Year 2011-12 dated 23/12/2016.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.T.R.Senthilkumar
Ms.K.G.Usharani
Standing Counsel

JUDGMENT

(Judgment was delivered by T.S.Sivagnanam, J.)

This appeal filed by the assessee is directed against the order of the Income-tax Appellate Tribunal, "C" Bench, Chennai, dated 09.10.2017, passed in I.T.A.No.886/Mds/2017 for the assessment year 2011-12 in so far as it remands the matter to the Assessing Officer to determine the extent of land appurtenant to the building and with the direction to redetermine the eligible deduction under Section 54F of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2.This Appeal has been filed by raising the following substantial questions of law:-

> 1) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal, having rightly held that the appellant had made out a case for deduction u/s 54F, was right in law to remitting the matter for determination of the claim to extent of land appurtenant to the building to the assessing officer?
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> 2) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that to claim a deduction u/s. 54F, land appurtenant to the building should be taken into consideration, even though assessee had constructed a residential house in the said land?

3.Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.T.R.Senthil Kumar and Ms.K.G.Usharani, learned Standing Counsel for the respondent.

4.As against the substantive portion of the order passed by the Tribunal dated 09.10.2017, namely, that the assessee is entitled to the deduction under Section 54F of the Act, the revenue filed a tax case appeal before the Hon'ble Division Bench of this Court in T.C(A).No.293 of 2018. The Hon'ble Division Bench after taking into consideration the factual position as recorded by the Appellate Commissioner as well as the Tribunal found that there is no substantial question of law involved in the matter and accordingly, the appeal filed by the revenue in T.C(A).No.293 of 2018 was dismissed by judgment dated 17.07.2018.

5.The learned Standing Counsel for the respondent revenue would contend that the present appeal filed by the assessee has become infructuous.

6.We do not agree with the said submission since the entitlement for deduction under Section 54F of the Act as found by the Tribunal has been confirmed by the Hon'ble Division Bench in T.C.(A).No.293 of 2018. The said issue having attained finality, the question of remanding the matter to the Assessing Officer for fresh consideration does not arise.

7.Thus, for the above reasons, the appeal filed by the assesee is allowed and the substantial questions of law are answered in favour of the assessee. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Deputy Commissioner of Income Tax,
Non-Corporate Circle-15,
Chennai.

2.The Income-tax Appellate Tribunal,
"C" Bench, Chennai.

3.The Commissioner of Income Tax (Appeal)-15,
Chennai.

4.The Assistant Commissioner of Income Tax,
Non Corporate Circle 15(1),
Chennai.

+1cc to Mr.T.R.Senthilkumar, Advocate Sr.2952
+1cc to Mr.R.Sivaraman, Advocate Sr.2888

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sj[co]
srg 27/02/2019