BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2019
Pronounced on : 09.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.1658 of 2018
and
WMP(MD)No.1758 of 2018

Francis Maria Selvaraj ... Petitioner

Vs.

The Assistant Commissioner of
Income Tax,
Circle -1, 1st Floor, Popular Buildings,
Mead Street, Nagercoil Range,
Nagercoil – 629 001,
Kanyakumari District. ... Respondent

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in PAN : ACSPM0119N for the Assessment Year 2015-16 under Section 143 (3) of the Income Tax Act, 1961 dated 28.12.2017, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.J.Prasannakumar for
for Mr.F.Deepak

For Respondent : Mrs.S.Srimathy
Special Government Pleader

ORDER

The writ petitioner is an income tax assessee. He filed his returns for the assessment year 2015-16. His case was selected for complete scrutiny and notice under Section 143 (2) of the Income Tax Act was issued on 19.09.2017. This was because a sum of Rs.1,92,01,588/- was credited to the writ petitioner's capital account. The writ petitioner submitted his reply to the effect that during the financial year 2014-15, he had sold agricultural property worth Rs.2,13,04,588/- which were situated in Villukury C village, Kalkulam Taluk, Kanyakumari District. It is not in doubt that as per the revenue records, the lands in question are agricultural in character. It is also not in dispute that Villukury Village is comprised in a town panchayat. However, the respondent by the impugned assessment order dated 28.12.2017 took the view that even though the lands sold are agricultural lands, capital gain is attracted on their sale since it is situated within 6 kms from Nagercoil Municipality. The lands in question were considered as a capital asset under Section 2(14) of the Act as the lands are within 6 kms from the Municipality limit of Nagercoil Municipality and the population of Villukury town Panchayat is 12,355 which is above the limit of 10,000. The total income was quantified at Rs.1,90,85,328/- and the long term capital gain was quantified at Rs.1,78,20,328/-. Challenging the same, this writ petition has been filed.

2.The respondent has filed a counter affidavit in which it has been contended that the authority was justified in taking the distance of the lands in question from Nagercoil Municipality. It has also been contended that the writ petition is not maintainable since the writ petitioner had not filed any appeal before the Commissioner of Income Tax Appeals, Madurai. The respondent has argued that the definition of the term “capital asset” as found under Section 2(14) of the Income Tax Act was rightly applied in the case on hand. The respondent thus prayed for dismissal of this writ petition.

3.Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondent and perused the materials on record. The learned counsel for the writ petitioner has also filed his written arguments.

4.The contention of the writ petitioner is that the lands in question are agricultural lands and that they are situated in Villukuri C Village and that they are at a distance of 4 kms from Nagercoil Municipality and 10 kms from Padmanabhapuram Municipality. According to the writ petitioner's counsel having regard to the definition of the term “capital asset” as found in Section 2(14) of the Act, the authority ought to have taken into account the actual distance from Padmanabhapuram Municipality and not from Nagercoil Municipality. The learned counsel for the writ petitioner would invoke the concept of jurisdictional municipality. It is his further contention that even though the relevant section underwent a substantial amendment during the year 2014, the concept of jurisdictional municipality still retain its relevance. According to him, the subject agricultural lands are coming under Padmanabhapuram Division and not in Nagercoil Division. The writ petitioner's counsel would refer to the decisions reported in (2014) 50 Taxmann.com 39, (2010) 188 Taxman 54 (Punjab & Haryana), (2010) 195 Taxman 420 (Punjab & Haryana), (2015) 53 Taxmann.com 62 (Madras), (2016) 73 Taxmann.com 156 (Madras), (2011) 12 Taxmann.com 305 (Chennai), (2016) 73 Taxmann.com 305 (Chennai), (2009) 29 SOT 394 (Amristar), (1995) 211 ITR 897 (Mad) and (2010) 39 SOT 350 (Hyd).

5.I carefully considered the rival contentions. It is not in dispute that the lands in question were purchased by the writ petitioner in the year 2006 and 2008 and were sold by him on 19.06.2014. Section 2(14) of the Income Tax Act, 1961 was amended on 01.04.2014. Post amendment, the relevant portion of the provision would read as under :

"Section 2 (14) : -

"capital asset" means—

(a)property of any kind held by an assessee, whether or not connected with his business or profession;

(*b*)any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992),

but does not include—

....

(*iii*) agricultural land in India, not being land situate—

(*a*)in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(*b*)in any area within the distance, measured aerially,—

(*I*)not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than ten thousand but not exceeding one lakh; or

(*II*)not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than one lakh but not exceeding ten lakh; or

(*III*)not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (*a*) and which has a population of more than ten lakh.

Explanation.—For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;"

6.We have to go only by the amended provision. Admittedly, the lands in question are located in a town panchayat and not in a Municipality. Therefore, it would not fall under Section 2(14)(iii)(a) of the Income Tax Act. Now, what is to be seen is whether it would fall within one of the three categories referred to in Section 2(14)(iii)(b) of the Act. The stand of the revenue is that admittedly Villukury Village is a village at a distance of less than 6.00 kms from the local limits of Nagercoil Municipality. Going by the 2011 census figures Nagercoil has a population of 2,08,149. It is definitely more than 1 lakh but not exceeding 10 lakh. But, the stand of the petitioner is that the distance should be calculated not from Nagercoil Municipality but from Padmanabhapuram Municipality.

7.I am of the view that the contention of the writ petitioner's counsel cannot be accepted for the reason that Section 2(14)(iii)(b) contemplates calculating distance of the land in question from the nearest municipality. Merely because Villukury Village falls within Padmanabhapuram Division, it does not mean that Padmanabhapuram Municipality will have to be taken as the jurisdictional municipality for the purpose of computing the distance. The expression used is "any municipality". Of course, as rightly contended by the writ petitioner's counsel, we will have to take note of the qualifying expression namely "as referred to in item (a)". It only means that the municipality from which the distance is calculated should have a population of not less than 10 thousand and that it should be a municipality as statutorily understood. It has no other meaning or connotation beyond it.

8.In this view of the matter, I hold that the order impugned in this writ petition is very much sustainable. There is no merit in this writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar()

/TRUE COPY/

Sub Assistant Registrar

To

The Assistant Commissioner of
Income Tax,
Circle -1, 1st Floor, Popular Buildings,
Mead Street, Nagercoil Range,
Nagercoil - 629 001,
Kanyakumari District.

+2 CC to M/s.F.DEEPAK, Advocate (SR-74378[F] dated 10/07/2019)

+1 CC to M/s.S.SRIMATHY, Advocate (SR-75095[F] dated 12/07/2019)

Order made in
WP(MD)No.1658 of 2018
and
WMP(MD)No.1758 of 2018
09.07.2019

SKM
JM/05.08.2019/4P-5C