IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

222 ITA-336-2017 (O&M)
Date of decision : 25.03.2019

Pr. Commissioner of Income Tax, Panchkula .... Appellant

vs

Rajinder Kaur ...... Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE MANJARI NEHRU KAUL

Present:- Mr.Yogesh Putney, Senior Standing Counsel for the appellant.

Mr. Rohit Kaura, Advocate for
Mr. Deepak Gupta, Advocate
for the respondent.

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<u>AJAY KUMAR MITTAL, J. (Oral)</u>

The present appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') against the order dated 21.12.2016 passed by the Income Tax Appellate Tribunal, Chandigarh Bench, in ITA No.765/CHD/2015 for the assessment year 2008-09, claiming the following substantial questions of law :-

(i) Whether on the facts and in the circumstances of the case the Ld. ITAT is right in law in holding the proceedings under Section 147 of the Income Tax Act, 1961 as bad in law based on the premise that there was no tangible material available on record to justify reopening of the assessment ignoring the aspect that the same value in the case of co-owner was taken for the purpose of calculating the capital gains?

(iii) Whether on the facts and in the circumstances of the case the Ld. ITAT is right in law in holding that no reopening can be made merely on the basis of valuation report of the DVO, whereas there is no such reference to the report of the DVO in the reasons recorded on 26.03.2013 after framing the assessment in the case of co-owner for the same Assessment year on 25.03.2013, on the same value, the processing of the assessment being for the purpose of determining the issue of taxability on the share of the Assessee?

(iv)Whether on the facts and in the circumstances of the case the Ld. ITAT is right in law in accepting the Appeal of the Assessee ignoring the material aspect that the Assessee participated in proceedings without challenging the Reopening, Report of the DVO and the Valuation adopted in the case of the Co-owner?

(v) Whether on the facts and in the circumstances of the case, the order passed by the Ld. Income Tax Appellate Tribunal is perverse in nature and against law as it grossly overlooked the scheme of the Income Tax Act, 1961 and material available on record?

2. At the outset learned counsel for the respondent submits that the tax effect involved in this appeal is ₹53,56,436/-. However during the pendency of the appeal, the assessee moved an application under Section 154 of the Act before Assessing Officer and the order dated 28.01.2019 has

been passed wherein the total tax effect has been determined at ₹44,67,837/-. A copy of the order passed under Section 154 of the Act has been produced in Court and the same is taken on record.

3. The said fact is not disputed by learned counsel for the appellant who has filed a copy of letter received from the Income Tax Department, Aayakar Bhawan, Panchkula showing that the tax effect is less than ₹50,000,00/-.

4. Learned counsel for the appellant-revenue states that since the tax effect involved is ₹44,67,837/-, he has instructions to withdraw the present appeal in view of circular No.03/2018, dated 11.07.2018 issued by ITA-178-2016 Board of Direct Taxes, New Delhi. However, he has prayed that liberty be granted to the revenue to file an application for revival of the appeal, in case something survives therein.

5. Dismissed as withdrawn with liberty as prayed for. It is, however, clarified that withdrawal of the appeal by the revenue shall not be taken to be affirmation of order of the Tribunal on merits. Further, the legal issue as claimed by the revenue is being left open to be adjudicated in an appropriate case.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

25.03.2019
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No