IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2020

CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
T.C.A.No.217 of 2020

The Commissioner of Income Tax,
Chennai. .. Appellant/Respondent

Versus

Smt Jgadeesan Sangeetha Lavanya
No.4, Nawab Abibullah Avenue
III Street, Thousand Lights
Chennai 600 006
PAN ATMPS3370A .. Respondent/ Appellant

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 05.09.2019 made in I.T.A.No.818/Chny/2019 relating to the Asst Year 2014-15 and against the order of the Income Tax Officer, Non Corporate Ward 3(3), Chennai dated 11.04.2019, made in GIR No.PA.No./AIMPS3370A for the Assessment year 2014-15 and against the order of the Principal Commissioner of Income tAx-5, Chennai-34, dated 01.10.2018, made in No.PCIT-5/ITO(HQ)/JSL/263/2/2018-19 for the Assessment year 2014-15.

For Appellant : Ms.Hemalatha
Senior standing counsel

For Respondent :Mr.G.Baskar

JUDGMENT
[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal filed by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 05.09.2019 passed by the Income Tax Appellate Tribunal, Madras, 'A' Bench ('Tribunal' for brevity), in I.T.A.No.818/Chny/2019 for the assessment year 2014-15. The appeal has been filed raising the following substantial questions of law.

> 1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the additions made by the AO as directed

by the Pr CIT in his order u/s.263 was unsustainable especially when the guideline value prescribed by the Tamil Nadu Government came into force with effect only from June 2017 which operated prospectively and therefore not applicable to the present assessment year?

2. Whether on the facts and circumstances of the case, the Tribunal was right in not considering the provisions of Sec.56(2)(vii)(b) of the I.T. Act which clearly states that the difference in value adopted by the Stamp Valuation authority viz a viz the actual consideration paid by the assessee has to be brought to tax under the heading income from other sources?

3.Is not the finding of the Tribunal bad by holding that the benefit of revised guide line value had to be given to the assessee based on a State Government guideline value which came into effect with effect from June 2017 ignoring the fact that the law as it stood on the date of purchase and the actual sale consideration paid by the assessee on the date of purchase and the actual sale consideration paid by the assessee on the date of purchase which are all undisputable facts and the revised guide line value cannot be adopted to the present assessment year especially when the same was prospective and not retrospective in operation?

2. We have elaborately heard Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant / Revenue and Mr.G.Baskar, learned counsel accepting notice for the respondent/assessee.

3. The assessment was completed under Section 143(3) by order dated 29.12.2016, determining total income at Rs.12,18,010/-. The assessee during the previous year relevant to the assessment year under consideration, AY 2014-15, had purchased Plot in Sholinganallur Village, Tambaram Taluk, for a sale consideration of Rs.144,00,000/- by Sale Deed dated 14.09.2013. For the purpose of Stamp Duty, the value of the documents was fixed at Rs.168,00,000/-. After the assessment was completed by order dated 29.12.2016, the Principal Commissioner of Income Tax Appellate Tribunal-V, Chennai ('the PCAT' for brevity), invoked his power under Section 263 of the Act on the ground that there is differences between actual sale consideration paid and market value fixed by the Registering Authority and this difference amounted to Rs.24,00,000/- and this was omitted to be treated as an income of an assessee

chargeable to tax under the head 'Income from Other Sources'. The assessee on receiving notice from the PCIT, submitted that the Government of Tamil Nadu had abnormally increased the Guideline Value with effect from 01.04.2012 for the purpose of assessing the Stamp Duty payable and these rates were brought down only after five years with effect from 09.06.2017 and if the escalated rates are to be adopted, the assessee, an individual would be put to irreparable loss and hardship. With regard to the proposal of the PCIT to invoke Section 56(2)(vii) of the Act, the assessee contended that the said provision will have no application to her case as 50% of the Sale consideration had already been paid and the assessee could not withdraw from the transaction and therefore, she should not be penalised.

4. On a reading of the order passed by the PCIT under Section 263 of the Act, dated 01.10.2018, we find that the Commissioner has not dealt with the aspects with regard to the argument that 'transfer' within the meaning of Section 2(47)(v) had taken place as there has been part performance of the Contract of Sale. Nevertheless, the Commissioner interfered with the Assessment Order and directed the Assessing Officer to assess differential amount of Rs.24,00,000/-. On appeal before the Tribunal, the Tribunal in our considered view took a correct decision by examining the factual aspects in its entirety and also noted the legal position as to the effect of guideline value fixed by the Government. The settled legal position is that the guideline value has been fixed by the Government for the purpose of computing the Stamp Duty payable on an instrument and the guideline value would not reflect the market value of the property. In support thereof, several decision has been referred. As pointed out, the Tribunal has rightly noted the legal position and considering the entire facts found that the additions made by the PCIT and the order passed under Section 263 of the Act is unsustainable.

5. We find there are no Questions of Law much less Substantial Questions of Law arises for consideration in this Appeal. The Tax Case Appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   'A' Bench, Chennai.

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

3. The Principal Commissioner of Income Tax-5,
   Chennai.

+1cc to Ms.Hemalatha, Senior Standing Counsel for Income TAx,
SR.No.27215

+1cc to Mr.G.Baskar, Advocate SR.No.27280

T.C.A.No.217 of 2020

MR(CO)
GMY(19/10/2020)