IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.1137 of 2009

The Commissioner of Income Tax,
Business Ward IV (3)
Nungambakkam High Road,
Chennai ... Appellant/Appellant

vs.

M/s.Pelican Estates and Developers,
Shoba Flat No.B2,
26, Old No.12, 10th Avenue,
Ashok Nagar, Chennai 83 ... Respondent/Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, B Bench, Chennai dated 30.04.2009 in I.T.A.No.1048/Mds/2006 for the Assessment year 2005-2006 against the order of the Commissioner of Income Tax Appeals VIII Chennai-34 dated 15.02.2008 in ITA No.35/07-08 against the order of the Income Tax Officer Ward IV(3)i/c Chennai-34 dated 31.12.2007 and made in PAN/GIR No.AAHFP2942H.

For appellant : Mr.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, B Bench in ITA No.1048/Mds/2006, by raising the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal is right in holding that the Development Agreement is not in instrument of transfer of land contrary to Advance Rulings in 294 ITR 196 ?

2. Whether on the facts and circumstances of the case, the Tribunal is right in rejecting the plea that the right to acquire conveyance of an immovable property is a capital asset?"

3. When the matter is taken up for hearing, learned Standing Counsel brought to our notice the Circular issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8 August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

4. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

5. Registry is directed to send a copy of the judgment to the Respondent / Assessee in the address given in the Appeal.

Sd/-

Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

kpl/tar

To

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

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

3.M/s.Pelican Estates and Developers,
Shoba Flat No.B2,
26, Old No.12, 10th Avenue,
Ashok Nagar, Chennai 83

4. The Income Tax Officer Ward IV(3)i/c
Chennai-34.

T.C.A.No.1137 of 2009

MG(CO)
GMY(24/09/2020)