IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM :

THE HON'BLE DR. JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

TAX CASE (APPEAL) NOS.387 AND 388 OF 2009

Commissioner of Income Tax Chennai	..	Appellant in both TCAs'
	-vs-	
Smt.Varanandhini Raghavan	..	Respondent in TCA No.387/2009
R.Madhavan	..	Respondent in TCA No.388/2009

PRAYER: Tax Case Appeals filed under under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "C" Bench, dated 28.09.2007 in ITA No.860/Mds/2007 and ITA No.859/Mds/2007 respectively, against the order of the commissioner of Income tax (Appeals)XII , 121, Mahatma Gandhi Road, Chennai-600 034 dated 23/01/2006 in ITA.Nos51 & 54/05-06 respectively against the assessment order dated 28/03/2005 passed by the Income Tax officer, Business ward XV(3) Chennai-34, and made in PA No.AAIPR4175K and AANPM2092D respectively.

For Appellant (in both TCAs') : Mr.N.Muralikumaran

For Respondent (in both TCAs') : Mr.R.Sivaraman

COMMON JUDGMENT

(Judgment of the Court was made by Dr. VINEET KOTHARI, J.)

The present appeals have been filed by the Revenue raising the following purported questions of law arising from the order of the learned Tribunal dated 28.09.2007. The relevant portion of the order of the learned Tribunal is quoted below for ready reference:

“12.On a consideration of the rival submissions and facts and circumstances of the case and material on record including the precedents, we are of the view that sec.263 order is to be quashed. The reason being that the AO while reframing the assessment; u/s. 143 (3) r.w. Sec. 147 perused the material available on record and came to a definite conclusion that this is not the year under appeal and for chargeability of capital gains. The AO has given a finding that there is no transfer of capital asset during this year for which the previous year ended on 31-3-97. There is no written agreement for the transfer during this year relevant. Only these assessees received only advance. The decisions of the Hon'ble Supreme Court and jurisdictional High Court relied on by the assessee including the decision of the Hon'ble Bombay High Court decision cited supra, directly support the contention of the assessee. The year of chargeability as taken by the AO is one of the possible view and it is not proved to be erroneous. At the same time the capital gains were subjected to tax in the subsequent asst. years 1998-99 to 2000-01. These facts are not in dispute. Under the circumstances the order u/s 263 cannot be said to be prejudicial to the interests of Revenue. Hence, we agree with the vehement contention of the ld. Counsel and quash the sec.263 order passed by the ld. CIT in respect of both the assessees herein. Accordingly assessees' appeals in ITA Nos.859 & 860 / Mds/ 07 are allowed.

13.Coming to the assessee's appeals against sec.143(3) r.w. Sec.263 in ITA Nos.917 & 918/Mds/06 for the A.Y. 1997-98, we are of the view that these appeals are to be dismissed as infructuous. We have quashed the sec.263 orders and hence the order giving effect to the sec.263 order has no legs to stand. These orders remain in vacuum. Therefore, these two appeals by the assessees against the orders giving effect to sec.263 order became infructuous and are liable to be dismissed as such. For the foregoing reasons we dismiss both the appeals of the assessee in respect of orders giving effect to sec.263 orders.”

2.The question of law as suggested in the appeals are quoted below for ready reference:-

> "Whether in the facts and circumstances of the case, the Tribunal was right in setting aside the order of CIT under section 263 on the ground that the order of reassessment proceedings cannot be treated as prejudicial to the interest of revenue."

3.The learned counsel for the Assessees Mr.R.Sivaraman has brought to the notice of this Court that both the respondents - Assessees viz., mother and son, Smt.Varandhini Raghavan and R.Madhavan have unfortunately now expired. He further submitted that no question of law arising in the present appeals by the Revenue, as the learned Tribunal has clearly noted in its impugned order quoted above that the above capital gains have already been subjected to tax in the subsequent assessment years AY 1988-1999 to 2000-2001. He submitted that for the present assessment year AY 1997-98, even though the Assessing Authority himself has accepted that there were no transfer of land in the Joint Venture Agreement for development of the property had taken place in this AY 1997-98, still by resorting to Section 263 of the Act, it cannot be said to be prejudicial to the interests of Revenue, as held by the learned Commissioner, which has been rightly set aside by the learned Tribunal by the impugned order and therefore, no question of law arises.

4.Having heard the submissions, we are satisfied that no question of law arises for consideration in the present case, as the capital gain tax already stand assessed and paid by the Assessees, who longer survive now.

5.Accordingly, the present appeals filed by the Appellant / Revenue, are liable to be dismissed and the same stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TK
To

1.The Income Tax Appellate Tribunal
Madras C Bench.

2.The Commissioner of Income Tax,
Chennai.

3.The Additional/ Joint Commissioner of Income tax
Business range XV, Chennai.

+2cc to Mr.T.Ravikumar, Advocate, Sr.No. 33395 &33393

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AD(CO)
RMP(03/11/2020)