IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.No.244 of 2020

The Commissioner of Income Tax
Chennai. ...Appellant

Versus

M/s.Doshi Estates
3H, Century Plaza, 560, Anna Salai,
Teynampet, Chennai 600 018
PAN AAGFD4592A ...Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''A'' Bench, Chennai dated 01.10.2019 in I.T.A.No.966/Chny/2017 against the order dated 21/03/2017 and made in C. No 2(2)/PCIT - 5/NCR 3/2016-17 on the file of the Principal Commissioner of Income Tax - 5, Chennai against the older dated 27/03/2015 and made in PAN No. AAGFD4592A on the file of Income Tax Officer, Non Corporate Ward 3(2), Chennai.

For Appellant : Ms.R.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 Revenue, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 01.10.2019 passed by the Income Tax Appellate Tribunal ('the Tribunal' for brevity), Bench 'A' Chennai in I.T.A.No.966/Chny/2017 for the assessment year 2012-13. 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 and justified in holding that the provisions of Section 80IA (10) does not apply to the provisions of Section 80IB(10)?

2. Is not the finding of the Tribunal bad, by holding that the Principal Chief Commissioner of Income Tax had not proved with material evidence that the profits of the firm were more than the ordinary profits and that the sale consideration of the land ought to be much higher without taking note of the fact brought out in the 263 order in the form of 3 independent joint agreement appended to the said order?

3. Whether the reasoning and finding of the Tribunal is proper by holding that there is no device to avoid tax, especially when the sons of the land owners who are non-resident Indian were introduced as partners into the firm without making any contribution and was only a ruse to avoid taxation of income in the hands of the Seller of the land as a share of profit from the firm received by the sons which is nothing but the sale consideration for the lands sold?

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

3. The assessee is a Partnership Firm consisting of five partners. They are broadly divided into two groups viz., Dhosi and Chandrasekaran Group. In Dhosi Group, there are three partners and Dhosi Group put together hold 65% share in the Firm and Chandrasekaran Family holds balance 35% which consists of two partners namely Mr.Akhil Chandrasekaran and Mr.Prem Chandrasekaran, who are the sons of Mr.V.Chandrasekaran and Mrs.Saraswathi Chandrasekaran, who are the joint owners of the land measuring about 2.61 acres in Tambaram. The land owners entered into an Agreement for joint development on 05.01.2007 proposing to put up a Housing Project. The Partnership Firm came into being on 10.10.2008 in which 65% share was held by the Doshi family and remaining 35% were held by the sons of Mr.Chandrasekaran. The land appears to have been developed by the Firm and sale of the flats took place during the assessment years under consideration, AY 2012-13 and 2013-14. The firm filed return of income on 29.09.2012 admitting total income as 'Nil'. The return was processed under Section 143(1) of the Act and subsequently the case was selected for scrutiny and the Firm filed a revised return and after hearing the assessee, the Assessing Officer completed the assessment under Section 143(3)

by order dated 27.03.2015 and the income assessed was at Rs.23,235/-.

4. The Principal Commissioner of Income Tax-5, Chennai ('PCIT' for brevity) invoked his power under Section 263 of the Act, who opined that the Assessing Officer while computing the quantum eligible for deduction under Section 80IB(10), omitted to examine the vital aspects and parameters. The PCIT came to the conclusion that the project income for the year is Rs.22.52 crores and the net profit stands at Rs.11.35 crores which is approximately 50% on the sales accounted for the year and such huge net profit margins in the business of construction is highly improbable and the same confirms that the net profit margin includes a major portion of gains that relates to the land sold by Smt. and Shri.Chandrasekaran who diverted as share of profit to their children Mr.Prem Chandrasekaran and Akhil Chandrasekaran. Therefore, the PCIT formed an opinion that the assessee firm would be ineligible for deduction under Section 80IB(10) to the extent of Rs.3,97,40,900/- that is 35% of share of profit for the year and therefore, the claim for deduction has to be restricted to Rs.7,37,18,972/-. This according to the PCIT is the basis for revoking the power under Section 263 of the Act, as the Assessment Order is both erroneous insofar as it is prejudicial to the interest of the Revenue.

5. The respondent assessee by letter dated 23.11.2015 requested to drop the proceedings initiated under Section 263 of the Act. Subsequently since there was a change of Commissioner, further showcause notice was issued calling upon the assessee to explain as to why the Assessment Order passed under Section 143 (3) of the Act should not be set aside as it is found to be erroneous insofar as it is prejudicial to the interest of the Revenue. The assessee contended that the sale transaction was well within the guideline value and there is no understatement of consideration. They placed reliance on the decision of the Supreme Court of India in the cases of 131 ITR 597 (K.P.Varghese Vs. ITO); 282 ITR 259 (CIT Vs. P.V.Kalyanasundram); 66 ITR 622 (CIT Vs. George Henderson Co.Ltd); 87 ITR 407 (CIT Vs. Gillanders & Arbuthnot & Co.Ltd.,); [2011] 203 Taxman 241 (madras) (Dr.Fareed Jamshid Italia Vs. ACIT). The PCIT after considering the reply submitted by the assessee held that if the owners of land (Smt. and Shri.Chandrasekaran) had entered into a Joint Development Agreement with any builder during the relevant period of time, by which constructed space is received by the owners in lieu of transfer of undivided share of land to the builders, the sharing ration of constructed space, would necessarily be in the ratio of 65:35 between the builder and the owner of the land. This ratio is uniformly adopted in all Joint Development Agreement in Chennai and in suburbs of Chennai. The PCIT opined that instead of providing sale proceeds of the

proportionate share of the constructed place to the owner directly, by the arrangement of the partnership business, the assessee firm has passed on the value of sale proceeds indirectly as share of profit credited to the sons of the land owner, this according to PCIT was nothing but excess sale consideration to the land transferred by the owners. The PCIT though found that the land was sold at the guideline value, held that the guideline value need not be a decisive factor to determine the sale consideration between related enterprises / parties and the guideline value cannot be the sole factor to determine the sale consideration for the purpose of computing the capital gains. The PCIT relied on the decision in the case of Thulasimani Ammal Vs. the Commissioner of Income Tax and Another (158 CTR Mad 5 (2000)] and in the case of M.Ponnusamy and Others Vs. District collector, Erode and Others (1999 (2) L.W 231) and the decision of the Hon'ble Supreme Cout in Ramesh Chand Bansal Vs. District Magistrate / Collector, Ghaziabad (AIR 1999 SC 2126). These decision were referred to support it's finding that the guideline value / circle rate is not final but it is only a prima facie determination of the rate of the area concerned to give guidance to the registering authority to test prima facie whether the instrument has properly described the value of the property and the circle rate under the Stamp Act / Rules is not final. The PCIT observed that the provision of Section 80IB are governed by Section 80IA(10) and net profits which stands at a phenomenal rate of 50% is definitely an arrangement of business so as to avail excessive deduction and accordingly set aside the assessment order.

6. The assessee carried the matter on appeal before the Tribunal. The Tribunal considered the submissions on either side, carried out a detailed analysis of the factual position and found that there is no material to suggest that the business of the assesseee / partnership was so arranged in such a way to produce more than the ordinary profit. The appeal of the assessee was allowed by the impugned order. Challenging the same, the Revenue is before us by way of this appeal.

7. After setting out the factual position and referring to Section 80IA(10) and Section 80IB(10), the learned Senior Standing counsel submitted that the order passed by the PCIT ought not to have been interfered with by the Tribunal and relied on the decision in the case of Thulasiammal and the decision of the Hon'ble Supreme Court in State of Punjab & Others Vs. Mohabir Singh (1996 (1) SCC 609) and the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Company Vs. CIT (Kerala State) dated 10.02.2020. These decisions were relied to support the contention that the guideline value is only an indicator and that cannot be a sole reason to term the sale transaction to be for a genuine value. Reliance was

also placed on the decision of the Hon'ble Court of Punjab and Haryana in Broadway Overseas Limited v. Commissioner of Income Tax, Jalandhar -I [2014 41 Taxmann.com 75 (TNH)].

8. Per contra, learned counsel for the respondent assessee contended that the facts of the case will clearly show that the assessee has not so arranged their business with a view to produce to the assessee more than the ordinary profits which might be accepted to arise in such eligible business. It is submitted that the Tribunal on going through the factual position found that there is no such methodology adopted by the assessee for invoking the provisions of Section 80IA(10). It is further submitted that the land owner is also entitled to claim deduction under Section 80IB and in support of such argument, reliance was placed on the decision in the case of Commissioner of Income Tax Vs. Astoria Leathers [2020 117 taxmann.com 907 (Madras)] dated 08.07.2020.

9. We have elaborately heard learned counsel appearing for parties and carefully perused the entire materials placed on record. We find that the issue involved in the matter is wholly factual. The Assessing Officer formed an opinion initially and completed the assessment under Section 143(3) of the Act. The PCIT thought fit to invoke his power under Section 263 of the Act and doubted the value adopted in the transaction and that the Partnership Firm was a device made to divert the excess profit to the sons of the land owners and this according to the PCIT was clearly hit by Section 80 IA(10) of the Act and the excessive deduction had to be deleted. The Tribunal on its part re-examined the factual position and opined that there is nothing to indicate that the land was transferred at the guideline value so as to shift the profit to the Partnership Firm and in the absence of any material to substantiate the same, there was no ground to interfere with the Assessment Order by invoking the power under Section 263 of the Act.

10. In the earlier part of this judgment, we referred to the factual position and noted that the Joint Development Agreement was entered into on 05.01.2007. According to the PCIT, the Partnership Firm was a device adopted by the assessee to arrange its business in such a manner to produce more than the ordinary profits. If such was the finding, then the Partnership Firm should have been in existence on the date when the Joint Development Agreement was entered into i.e., on 05.01.2007. However, the undisputed fact is that the Partnership Firm came into being pursuant to the Deed of Partnership on 10.10.2008, which much after the Joint Development Agreement. There is no quarrel on the legal proposition that the guideline value fixed by the State is only an indicator of the value of the property. The predominant purpose for which the guideline

value is fixed by the State is for computing the stamp duty on an instrument of sale. However in the instant case, the PCIT faulted the land owners for having sold the land at the guideline value. There was no material available before the PCIT that such guideline value was ridiculously low. In fact, the profit is being computed based on the sale which were effected during the assessment year under consideration, AY 2012-13, that is more than five years after entering into the Joint Development Agreement, four years after the Partnership Firm came into being. Therefore, in the absence of any material to show that the assessee had so arranged the business and made transaction to produce more than the ordinary profits and the same having not been established by the Revenue, there was no ground for the PCIT to exercise its power under Section 263 of the Act.

11. Reading of the order of the PCIT dated 21.03.2017, we find that it is based on the hypothetical situation, we say so because the PCIT states that under normal circumstances, if there is a direct Joint Development Agreement, the parties would act in a particular fashion. There can be no presumptions and assumptions while deciding the correctness of an order of assessment, more particularly when the PCIT invokes his power under Section 263 of the Act. The Statute mandates twin conditions to be fulfilled while exercising such power and therefore there is no room to invoke such a power and in the absence of any material before the PCIT to term the Partnership Firm to be a device adopted by the assessee to earn more than the ordinary profit, there was no reason for the PCIT to interfere with the Assessment Order under Section 143(3) of the Act. That apart, the Tribunal has elaborately considered the factual position and granted relief to the assessee.

12. Thus for the above reasons we find that there are no Questions of Law much less Substantial Questions of law arises for consideration in this appeal. Accordingly the Tax Case Appeal fails and dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commissioner of Income Tax
Chennai.

The Income Tax Appellate Tribunal
"A" Bench,
Chennai.

The Principal Commissioner of Income Tax - 5
Chennai

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

+1cc to Mr.G.Baskar, Advocate, S.R.No.28689

+1cc to Mr.T.Ravikumar, Advocate, S.R.No.28526

T.C.A.No.244 of 2020

VD(CO)
RN(06/11/2020)