In the High Court of Judicature at Madras

Dated : 15.07.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal No.276 of 2018

Principal Commissioner of Income Tax 6
No.121, Mahatma Gandhi Road,
Chennai. ...Appellant/Appellant

Vs

Shri T.Arunprakash,
No.6, 7th Cross Street Extn.
Adyar, Chennai – 600 020.
PAN: AEEPT8489A ...Respondent/Complainant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.10.2017 in ITA No.3191/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench for the assessment year 2012-2013 and against the Order of the commissioner of Income-Tax Appeals-15, chennai dated 18/08/2016 and made in ITA No.110/CIT(A)-15/2015-16 and against the order of the Assistant Commissioner of Income Tax, Non-Corporate Circle-15(1) Chennai-34 dated 23/03/2015 made in PAN/GIR No.AEEPT8489A for the Assessment year 2012-13.

For Appellant : Mr.J.Narayanasamy
Standing Counsel

For Respondent : Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.J.Narayanasamy, learned Standing Counsel appearing for the appellant and Mr.A.S.Sriraman, the learned counsel appearing for the respondent.

2.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 11.10.2017 passed by the Income Tax

Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) in ITA No.3191/Mds/2016 for the assessment year 2012-13.

3.The revenue has raised the following substantial questions of law for our consideration:

> "1.Whether the ITAT is right in holding that the profit arising out of sale of plots in a approved layout is chargeable under capital gains, especially when the lands purchased were divided into plots, developed and sold in parcels which is "an adventure in the nature of trade" and taxable as "business income"?
>
> 2.Whether the ITAT is correct in not following the decision of Hon'ble Apex Court decision in the case of Raja J Rameshwar Rao reported in 42 ITR 179 (SC) and G.Venkataswami Naidu & Co. vs. CIT [1959] 35 ITR 594 (SC)?"

4.The question which has to be decided in the instant case is whether the assessee was right in offering the sale proceeds realized by him for capital gains and whether the Assessing Officer was right in rejecting such claim and holding that the income has to be treated as business income as the lands were purchased, developed and divided into plots and sold and therefore, it is an adventure in the nature of trade and taxable as business income. The facts have been culled out by the Commissioner of Income Tax (Appeals)-15 [CIT(A)], Chennai in his order dated 18.08.2016 when he allowed the appeal filed by the assessee against the assessment order dated 23.03.2015. On perusal of the facts, it is clearly evident that the land in question was owned by the assessee and the adjoining lands were owned by other persons. The lands owned by the assessee was held by him for more than seven years as agricultural lands. It appears that the assessee and the other neighbouring land owners wanted to divide the land into plots and applied for an approval from the Directorate of Town and Country Planning. Though approval was obtained, the lands continued to remain as agricultural lands and there is sufficient material produced by the assessee to establish the same, more particularly, the assessment under the Wealth Tax Act for the assessment years 2007-08 to 2011-12. Ultimately, the assessee and the other land owners were approached by an Association of Doctors who had entered into sale agreement with the assessee for sale of the land. It is at the request of the Association roads were formed and the plots were delineated. This according to the Assessing Officer would amount to a real estate transaction and that is an adventure in the nature of trade and therefore income should be treated as business income. At no point of time, the assessee was shown to be a real estate developer, he is stated to be a Doctor in profession and also a partner in a firm. This will not have an impact on the nature of income earned by the assessee. Out of the total amount of sale consideration received, the assessee had invested in a residential house and to that extent, claimed exemption under Section 54F of the Act. Thus, these facts were taken into consideration by the CIT(A) and a clear finding has been recorded by the CIT(A) on facts that the transaction is not a real estate development transaction. The correctness of the finding was tested by the Tribunal at the instance of the revenue. The Tribunal re-appreciated the factual position and affirmed the view taken by the CIT(A). Thus, we find that the entire factual matrix has been thoroughly adjudicated and finding has been recorded and we find that there is no perversity in the finding of the Tribunal or for that matter in the order of the CIT(A). Therefore, we hold that there is no question of law much less the Substantial Questions of law arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III-MDU)

//True Copy//
Sub Assistant Registrar

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To

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

2.The Commissioner of Income Tax(Appeals-15)
Room-No.221, 121 MG Road,
Nungambakkam, Chennai-34.

3.The Assistant Commissioner of Income Tax,
Non-Corporate Circle-15(1), Chennai-34.

TCA.No.276 of 2018

VG II(CO)
CB(30/09/2020)