IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.537 & 538 of 2018 & CMP.No.11174 of 2018

Principal Commissioner of Income Tax-6, Chennai ...Appellant/Appellant

Vs

M/s.Suryavardhan Estates Pvt. Ltd., Chennai-2 ...Respondent/Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 17.10.2017 made in ITA.No.462/Mds/2017 and C.O.No.36/Mds/2017 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment year 2012-13 and against the Commissioner of Income Tax(Appeals) Room No.221, 121, M.G.Road, Nungambakkam, Chennai I.T.A.No.180/CIT(A)-15/2015-16 dated 07/11/2016 (PAN NO.AAJCS5120M)for the Assessment year 2012-2013 and against the order of the Assistant Commissioner of Income Tax(OSD) Corporate circle-6, 2nd floor, New Block Room No.209, 121, M.G.Road, Chennai-600034, dated 27/03/2015 PAN NO.AAJCS5120M Status-Company for the Assessment year 2012-2013 respectively.

For Appellant : Mr.J.Narayanasamy, SSC
(In both cases)

For Respondent: Mr.A.S.Sriraman
(In both cases)

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

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

2. These appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) challenging the common order dated 17.10.2017 made in ITA.No.462/Mds/2017 and C.O.No.36/ Mds/2017 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

3. The above appeals were admitted on 06.9.2018 on the following substantial questions of law :

> "i. Whether the ITAT was justified in holding that the rental receipts on account of letting out of property was to be treated as 'business income' then the question of computation of notional ALV does not arise? And
>
> ii. Whether, on facts and in law, the ITAT erred in holding that the Revenue had assessed income from letting out unsold shops in Coramandel Plaza as 'business income' and therefore not adjudication the grounds of appeal of the Revenue whereas the Revenue had assessed the said income as 'house property income' and the CIT(A) on appeal reversed it and held as 'business income'?"

4. First, we take up for consideration the second substantial question of law. In fact, there would be no requirement to decide this substantial question of law in the light of the sudden subsequent developments. The Revenue filed M.P.No.94/Chny/2018 before the Tribunal to recall the order passed by the Tribunal wherein an observation was made that the income from Coromandel Plaza was to be assessed as business income under Section 28 of the Act. The Revenue contended that this was illegal and factually incorrect as the Assessing Officer did not assess the income from Coromandel Plaza as business income. The Tribunal, after hearing both the Revenue as well as the assessee, by order dated 08.10.2018, allowed the said miscellaneous petition and recalled that portion of the order passed by it. Thus, the basis for filing these appeals and raising the second substantial question of law, as of now, does not survive because the finding has already been recalled by the Tribunal and the Tribunal will hear the matter afresh. Therefore, we hold that there is no necessity to answer the second substantial question of law.

5. One more substantial question of law raised for consideration in these appeals is as to whether the Tribunal was justified in holding that the only course available to the Revenue is the revision of its order under Section 263 of the Act. So far as this question is concerned, we find that the observation made by the Tribunal regarding exercise of power by the Commissioner under Section 263 of the Act is a power to be advisorial and no substantial question of law arises from such observation. Hence, this substantial question of law is rejected.

6. So far as the first substantial question of law framed for consideration, it relates to the rental receipts of

the assessee with regard to letting out of the property and whether it needs to be treated as business income. This issue also need not be answered in the light of the fact that we have allowed the assessee's appeal in TCA.Nos.767 to 769 of 2019 by a common judgment dated 09.10.2020 i.e. today, set aside the common order of the Tribunal and remanded the matter to the Tribunal for a fresh consideration. Accordingly, the first substantial question of law framed is left open and both the assessee as well as the Revenue can raise all the issues before the Tribunal.

7. For the foregoing reasons, the above appeals stand accordingly disposed of. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2. The Commissioner of Income Tax(Appeals),
Room No.221, 121, M.G.Road, Nungambakkam, Chennai.

3. The Assistant Commissioner of Income Tax(OSD),
Corporate circle-6, 2nd floor, New Block,
Room No.209, 121, M.G.Road, Chennai-600034.

TCA.Nos.537 & 538 of 2018
and CMP.No.11174 of 2018

AD(CO)
RV(08/12/2020)