IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

and

THE HONOURABLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

Tax Case Appeal Nos.622 to 624 of 2018 and
C.M.P. Nos. 12728 and 12729 of 2018

The Commissioner of Income Tax,
Chennai .. Appellant in all the appeals

Vs.

Smt. Sushila Devi Kejriwal .. Respondent in all the appeals

Tax Case Appeals filed under Section 27A of the Wealth Tax Act, 1957 against the order made in W.T.A.Nos.25, 26 & 27/Mds/2016 dated 23.11.2016 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, for the Assessment Years 2005-2006, 2006-2007 and 2007-2008 respectively.

In all the appeals:

For Appellant : Mr.J.Narayanasamy

For Respondent : Mr.A.S.Sriraman

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

These appeals have been filed by the revenue under Section 27A of the Wealth Tax Act, 1957 (the 'Act' for brevity), challenging the common order passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai in W.T.A. Nos. 25, 26 & 27/Mds/2016 dated 23.11.2016 for the Assessment Years 2005-2006, 2006-2007 and 2007-2008 respectively.

2. The following substantial questions of law have been raised for consideration:

> *"1. Whether under the facts and circumstances of the case and in law, the Tribunal was right in dismissing the appeal of the department stating low tax effect when the tax effect mentioned in the CBDT Circular No.21/2015 is applicable only for income tax matters and while the impugned appeal is under the Wealth Tax Act.*
>
> *2. Whether under the facts and circumstances of the case and in law, the Tribunal was right in relying on the CBDT Circular 3/2011 when the same was superseded by CBDT Circular No.21/2015?*

3. Whether under the facts and circumstances of the case and in law, the Tribunal was right in not appreciating the fact that the present appeals involves revenue audit objection and the Board Circular cannot be applied.'

3. We have elaborately heard Mr.J.Narayanasamy, learned counsel appearing for the appellant/revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee.

4. The first two substantial questions of law have to be answered against the revenue, in the light of the Circular issued by Central Board Direct Taxes [for brevity, 'CBDT'] bearing Circular No.5/2019 dated 05.02.2019, which reads as follows:

'Reference is invited to Board's Circular No.3 of 2018 dated 11.07.2018 (hereinafter, referred to as "the Circular") vide which monetary limits for filing of income tax appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court were specified. Para 11 of the Circular states that the monetary limits specified in para 3 shall not apply to writ matters and Direct tax matters other than Income tax and filing of appeals in such cases shall continue to be governed by relevant provisions of statute and rules.

2. There is no charge under Wealth Tax Act, 1957 w.e.f 1st April, 2016. Therefore, as a step towards litigation management, it has been decided by the Board that monetary limits for filing of appeals in Income tax case as prescribed in Para 3 of the Circular shall also apply to Wealth Tax appeals through extension of the Circular to

Wealth tax matters in a mutatis mutandis manner and with modifications as prescribed hereunder:

3. For the purpose of Wealth Tax appeals:

A.Para 4 of the Circular shall be read as follows:
"For this purpose, 'tax effect' means the difference between the tax on Net Wealth assessed and the tax that would have been chargeable had such Net Wealth been reduced by the amount of wealth in respect of the issues against which appeals is intended to be filed. However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the amount of interest shall be the tax effect. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against"

B. Para 11 of the circular shall read as follows:
"The monetary limits specified in para 3 shall not apply to writ matters."
4. The said extension of the Circular to wealth tax appeals shall come into effect from the date of issue of this circular.
5. The same may be brought to the notice of all concerned.
6. Hindi version will follow.'

5. In view of the above circular, the threshold limit fixed by the CBDT for the revenue to pursue the appeals has been made applicable to Wealth Tax Appeals also with effect from 05.02.2019. In the light of the above circular, the substantial questions of law Nos.1 and 2 are answered against the revenue.

6. Mr.J.Narayanasamy, learned counsel appearing for the appellant / revenue contended that the Tribunal erred in dismissing the appeals on the ground of law tax effect without taking note of the fact that the revenue audit objection is there in the assessee's case and therefore, the cases would come within the exemption culled out in the circular.

7. It is not clear what is the revenue audit objection in the instant matter. Nevertheless, we have heard the learned counsel for the parties on the merits of the matter. The issue pertains to valuation of a property in Neelankarai village. The assessee contended that the property falls within the high tide zone and in the terms of the coastal zone regulations, the property cannot be put to use for the purpose of constructing any building there on and even if an application is made to the local planning authority / local body, the same will be rejected, as the planning authorities have no jurisdiction to deal with any application for grant of planning permission on a land, which falls within CRZ limits.

8. The assessing officer did not agree with the same, however, the Commissioner of Income Tax [Appeals] - 15 Chennai, [for brevity, 'CITA'] agreed with the assessee by taking note of the fact that the property falls within the CRZ III Category and the agreement of sale,

which was entered into by the assessee was cancelled on 04.06.2005 since at the time of entering into an agreement, the parties were not aware that no construction can be put up on the land.

9. The CITA has recorded the factual finding that the land, which is unbuiltable under any law for the time being in force, is not an urban land and as such, is not an asset within the meaning of Section 2(e) (a) of the Wealth Tax Act. The CITA also referred to a decision in the case of Prabhakar Keshav Kunde Vs. CIT reported in (2010) 194 Taxman 306 (Bom). Thus, considering that factually, the CITA on verification found that the land falls within the prohibited zone CRZ III category.

10. We find no question of law arises for consideration in the instant cases and therefore, we are not inclined to entertain the appeals filed by the revenue. As mentioned above, the substantial question of law no.3 raised by the revenue is, stating that the Tribunal ought not to have rejected the revenue's appeal on the ground of low tax effect, without noting the revenue audit objection. Since we have decided in favour of the assessee on merits, substantial question of law no.3 does not arise for consideration.

11. For the above reasons, the appeals filed by the revenue are dismissed against the revenue and substantial question of law nos.1 and 2 are answered against the revenue and substantial question of law no.3 is held to be unnecessary in the facts and circumstances. Consequently, connected miscellaneous petitions are closed. No Costs.

[T.S.S., J.] [V.B.S., J.]

30.09.2020

Index : Yes/No
Internet : Yes
Speaking/Non-speaking Judgment

ssd

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