In the High Court of Judicature at Madras

Dated : 01.10.2020

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.683 to 686 of 2019 &

CMP.Nos.20476, 20477 & 20479 of 2019

The Principal Commissioner of
Wealth Tax, Central-2, Chennai …Appellant in all Tax Cases

Vs

Mrs.Sushila Devi Kejriwal …Respondent in all Tax Cases

APPEALS under Section 27A of the Wealth Tax Act, 1957 against the common order dated 08.2.2019 made respectively in WTA. Nos.18, 20, 17 and 19/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench respectively for the assessment years 2009-10, 2010-11, 2008-09 and 2011-12. Against the order dated 29.12.2017 passed by the Commissioner of the Wealth Tax(Appeals)-15, Chennai in ITA No.174 & 175/2016-17/CIT (A)-15 and ITA NO.176 & 178/2016-17/CIT(A)-15 and against the order dated 31/03/2016 passed by the Wealth Tax Officer, Non-corporate Ward 15(5), Chennai 600034 for the assessment year 2009-10, 2010-11, 2008-09 and 2011-12 respectively.

For Appellant : Mr.J.Narayanasamy, SSC
For Respondent: Mr.A.S.Sriraman

COMMON JUDGMENT

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

These appeals, filed by the Revenue under Section 27A of the Wealth Tax Act, 1957 (for short, the Act), is directed against the common order dated 08.2.2019 made respectively in ITA.Nos.18, 20, 17 and 19/Chny/2018 on the file the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Tribunal) respectively for the assessment years 2009-10, 2011-12, 2008-09 and 2010-11.

2. The Revenue filed these appeals by raising the following substantial questions of law :

> "i. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal erred in interpreting the term

'land on which construction of building is not permissible under any law' in the definition of urban land under Section 2(ea) of the Wealth Tax Act, 1957 to include the impugned land where construction is only restricted ?

ii. Whether, on the facts and in the circumstances of the case and in law, the finding of fact of the Appellate Tribunal is perverse as it has concluded from the report of the DVO that construction on the land falling under the Coastal Regulation Zone (CRZ) is not permitted when, in fact, the report of the DVO has stated that construction on such land is restricted ?"

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

4. By the impugned common order, the Tribunal rejected the appeals filed by the Revenue on merits holding that the land owned by the respondent – assessee would not fall within the definition of the expression 'urban land' under Section 2(ea) of the Wealth Tax Act, as the land is situated within the prohibited distance of the Coastal Regulation Zone (CRZ) and as it falls under the category 'CRZ III'.

5. In the assessee's own case for the assessment years from 2005-2006 to 2007-2008 the Tribunal rejected the Department's appeals on the ground of low tax effect. The Revenue carried the matter by way of appeals to this Court contending that the matter arose under the Wealth Tax Act and the relevant circular of the Central Board of Direct Taxes relied upon by the assessee was inapplicable. By common judgment dated 30.9.2020 in TCA.Nos.622 to 624 of 2018, we rejected the said contention raised by the Revenue and dismissed the appeals filed by the Revenue.

6. In the said common judgment, we dealt with the merits of the claim and held in favour of the assessee on the following lines :

"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."

7. In the light of the above position, taking note of the said decision in the assessee's own case for the earlier assessment years, these appeals have to be necessarily rejected.

8. Accordingly, the above tax case appeals are dismissed and the substantial questions of law are answered against the Revenue. Consequently, the connected CMPs are also dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'C' Bench
2.The Commissioner of Wealth Tax(Appeals)-15, Chennai.
3.The Wealth Tax Officer, Non-corporate ward 15(5), Chennai-034.
4.The Principal Commissioner of Wealth Tax, Central-2, Chennai.

TCA.Nos.683 to 686 of 2019 and
CMP.Nos.20476, 20477 & 20479
of 2019

SAI(CO)
RV(19/11/2020)