IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2020

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

T.C.(A) No.1017 of 2019

The Principal Commissioner of Income Tax
Puducherry
D.P. Thottam, Muthialpet
Puducherry - 605 003. .. Appellant / Respondent

Vs.

S.Sithik Ali
No.78, Rajagopal Street
Villupuram - 605 602. .. Respondent / Appellant

Prayer : Tax Case (Appeal) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 10.05.2019 in ITA.No.195/Chny/2019, Assessment Year : 2010-2011 against the order dated 06.09.2018 made in ITA.No.80/CIT(A)-PDY/2017-2018 on the file of the Commissioner of Income-Tax(Appeals) Puducherry, against the order dated 08.12.2017, made in PAN/GIR.CCLPS 9628H on the file of the Income Tax Officer, Ward, Villupuram.

For Appellant : Mr.J.Narayana Swamy, Senior Counsel

For Respondent : Ms.Ashokpathy
for M/s.Pass Associates

JUDGMENT

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

This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 [the 'Act' for brevity] is directed against the order dated 10.05.2019, passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai in I.T.A.No.195/Chny/2019, for the Assessment Year 2010-2011.

2. The Tax Case appeal was admitted on 10.12.2019, on the following substantial questions of law :

> " 1.Is not the order of the Appellate Tribunal perverse by relying upon the Valuation Report dated 08.04.2019 of the registered valuer, which in inaccurate, deficient and incomplete without giving any basis for the adoption of higher rate of Rs.290/- per sq.ft., as on 01.04.1981 and without reference to any comparable cases?
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> 2.Whether the Appellate Tribunal was correct in following that the value of the property at Rs.20/- per sq.ft., as on 01.04.1981, which was adopted by the Assessing Officer based on Sub Registrar Office report, as per Section 50C of the Income Tax Act?
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> 3. Whether the Appellate Tribunal is justified in accepting the fresh evidence produced by the assessee namely Registered Valuer's Report dated 08.04.2019 by ignoring Rule 46A of the Income Tax Rules 1962 and without providing a fair opportunity to the Assessing Officer?"

3. We have elaborately heard Mr.J.Narayana Swamy, learned Senior Counsel for the Appellant-Revenue and Mr.Ashokpathy, learned counsel for the respondent-Assessee.

4. The issue involved is regarding the valuation of the property for the purpose of calculating the capital gain tax. The Assessing Officer determined the value of the property as Rs.20/- per sq.ft., as on 01.04.1981, and held that this should

be taken as acquisition of asset for the computation of capital gain. The Assessee, on the other hand contended that taking note of various transactions that had taken place in the said area/road, the value of the property should be taken at Rs.350/- per sq.ft., The Assessing Officer completed the assessment by order dated 19.03.2015. However, the Principal Commissioner of Income Tax, Puducherry, invoked Section 263 of the Act and held that the order of the Assessing Officer dated 19.03.2015 was erroneous and prejudicial to the interests of Revenue and accordingly, set aside the order of the Assessing Officer, and directed the Officer to do the assessment afresh adopting the guideline value under Section 50C of the Act with respect to the sale value, upon which the capital gains tax has to be calculated. The Assessee did not challenge the order passed under Sec.263 of the Act and went back to the Assessing Officer, who completed the assessment by 08.12.2017, determining the cost of acquisition as Rs.20/- per sq.ft., and accordingly the long term capital gains was worked out. The Assessee filed an appeal before the Commissioner of Income-Tax (Appeals) Puducherry, who, by order dated 06.09.2018, rejected the appeal and confirmed the order of the Assessing Officer. The Assessee carried the matter by way of appeal to the Tribunal. The Tribunal after carefully considering the facts and also noting that upto the year 1984, the value of the property continued to remain at Rs.20/- per sq.ft., and in 1984, it increased to Rs.340.30p per sq.ft., and also taking note of the report of the approved valuer, who valued the property at that relevant time to Rs.203/-, found that the said value is reasonable. The Assessing Officer, though in the first round agreed with the Assessee, but, on the directions received from the Principal Commissioner of Income Tax, Puducherry, under Sec.263 of the Act, called for the guideline value from the Sub Registrar Office and fixed the cost of acquisition at Rs.20/- per sq.ft., and computed the long term capital gains. The records which were placed before the Assessing Officer would appear to show that there were no transactions prior to 1984 and in 1984, the value was Rs.340.30p per sq.ft., The Tribunal, after considering the facts found that it is very unrealistic that the value of the property to increase from Rs.20/- per sq.ft., to Rs.340.30p per sq.ft., within a span of three years. Therefore, it thought it fit to adopt the value of the registered valuer, who adopted the value as Rs.203/- per sq.ft., This was found to be reasonable by the Tribunal.

5. In the considered view of this Court, the order passed by the Tribunal does not suffer from any perversity, for us to examine the factual conclusion arrived at by the Tribunal, and we also find no substantial questions of law arises for

consideration in this appeal. Accordingly, the appeal fails and hence, dismissed. The order of the the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 10.05.2019, passed in ITA.No.195/Chny/2019, is hereby confirmed. No costs.

-s/d-
Assistant Registrar

true Copy
Sub-Assistant Registrar

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To:

1.The Income Tax Appellate Tribunal A Bench
chennai

2.The Principal Commissioner of Income Tax
Puducherry
D.P. Thottam, Muthialpet, Puducherry - 605 003.
3.The Commissioner of Income Tax(Appeals)
Puducherry.

4.The Income tax Officer
Ward-I, Villupuram

T.C.(A) No.1017 of 2019

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