IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.7.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.828 of 2017

Principal Commissioner of Income Tax 6
No.121, Nungambakkam High Road,
Chennai 600 034. .... Appellant

vs

Shri.C.R.Badrinarayanan
2/581, 1st Cross Street,
Singaravelan Salai,
Neelankarai, Chennai 600 041.
PAN: AFVPB7105B ...Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 11.7.2017 in in I.T.A.No.1600/Mds/2016.

This Appeal filed against the Income Tax Appellate Tribunal Madras 'A' Bench dated 11/07/2017 in ITA No.1600/mds/2016 Assessment Year 2006-2007 against The Commissioner of Income Tax Appeals-15 in ITA No.149/CIT (A)-15, 14-15,PAN No.AFUPB7105B Assessment Year 2006-2007 dated 03/03/2016 against the Income Tax Officer, Business Ward No.III (2), Chennai-600 034 PAN No.AFVPB7105B dated 12/03/2014 Assessment Year 2005-2006.

For Appellant : Mr.J.Narayanasamy,
Senior Standing Counsel

For Respondent : No appearance.

ORDER
(Made by Dr.Vineet Kothari,J)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. The Revenue has filed the present Appeal under section 260-A of the Income Tax Act aggrieved by the order of the learned Tribunal dated 11th July 2017 in I.T.A.No.1600/Mds/2016 for the Assessment Year 2006-07, by which the learned Tribunal held that the re-assessment proceedings initiated against the Assessee under section 147/148 of the Act were not justified beyond the period of four years from the date of passing of the original Assessment Order as there was no failure on the part of the Assessee to fully and truly disclose the relevant materials at the time of Original Assessment.

3. The relevant para 5 of the order of the Tribunal is quoted below for ready reference:-

> "(i) We have considered the rival submissions. It is clear from the reassessment order, as extracted supra, that the Assessing Officer did not have any fresh information. It appears that during the course of reassessment proceedings only he has ascertained from the sub-Registrar about the guideline value and proceeded to complete the re-assessment. Thus, there is merit in the submissions of the assessee that there was no tangible material before the Assessing Officer on the basis of which the reassessment could have been reopened. In the absence of tangible material, what the AO has done while reopening the assessment is to change his opinion which was formed earlier. The reassessment made after four years from the end of the assessment year on a change opinion can't be upheld. In this case, the assessee had disclosed fully and truly all material facts necessary for his assessment at the time of original assessment. The AO has not established the reasons for the failure on the part of the assessee and hence, the proceedings initiated after four years from the end of this assessment year is quashed."

4. It seems that the re-assessment proceedings were initiated to lower the figure of cost of acquisition from Rs.137/- per sq.ft, disclosed in the Original Assessment by the Assessee, to Rs.16/- per sq.ft, based on the guideline value fixed by the competent Government Committee. In other words, the amount of Capital Gains would be taxable at the hands of the Assessee on the sale of Capital Assets in question.

5. Though the Revenue's stake involved in the present case is merely a sum of Rs.3,00,000/- and according to the latest

CBDT Circular No.17/2019 dated 8th August 2019, the Revenue could have withdrawn the present Appeal under its litigation policy. However, as the case pertains to re-assessment proceedings, in view of the exception carved out in the said CBDT Circular, the learned Senior Standing Counsel pressed the present Appeal on merits.

6. Nobody has put in appearance on behalf of the Respondent/Assessee though the name of the Assessee, Mr.C.R.Badrinarayanan, after service of notice, is shown in the cause list.

7. Having heard the learned Senior Standing Counsel appearing for the Appellant/Revenue, we are of the clear opinion that there is no error in the order of the learned Tribunal and the learned Tribunal has rightly held that the re-assessment proceedings were initiated merely on a change of opinion by the Assessing Authority, which is impermissible in law.

8. There is no dispute that the relevant evidence and facts about the cost of acquisition were very much available before the Assessing Authority at the time of passing of the Original Assessment Order and therefore, just to increase the quantum of Capital Gains on the basis of alleged Guideline Value to be treated as cost of acquisition in the hands of the Assessee, the Assessing Authority took the recourse to re-assessment proceedings under section 147 of the Act.

9. We are of the clear opinion that the assumed value or Guideline Value of the capital asset could not override the real cost of acquisition established by the Assessee on the basis of relevant evidence during the course of Original Assessment proceedings.

10. Therefore, we do not find any substantial question of law to be arising in the present Appeal filed by the Revenue from the order of the learned Tribunal. The Appeal is, thus, found to be devoid of any merit and is liable to be dismissed. The same is, accordingly, dismissed. No order as to costs. Copy of this order may be sent to the Respondent/Assessee at the address given.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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

2.The Commissioner of Income Tax (Appeals-15),
121, Mahatma Gandhi Road, Nungambakkam,
Chennai-600 034.

3.The Income Tax Officer,
Business Ward-III(2),
Chennai-600 034.

T.C.A.No.828 of 2017

vsn II[co]
srg 04/11/2020