IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM :

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

Tax Case (Appeal) No.782 of 2018

The Commissioner of Income Tax
Chennai. ...Appellant

-vs-

Shri A.V. Gopalakrishnan ...Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 08.02.2018 in ITA No.3163/Chny/2016 against the order of the Commissioner of Income Tax (Appeals)-4 Chennai-34 dated 30.08.2016 and made in ITA No.58/2015-16/A.Y-2007-08/CIT(A)-4 and against the order of the Income Tax Officer, Non Corporate Ward 16(3), Chennai-34 dated 31.03.2015 for the assessment year 2007-2008

For Petitioner : Mr. T. Ravi Kumar

For Respondent : No appearance.

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.,)

The Revenue is the appellant.

1. The Respondent/assessee, for the Assessment Year 2007-08, by an order of the Assessing Officer dated 31.03.2015, was imposed a tax of Rs.86,83,173/- and it was followed by a Penalty proceedings under Section 271(1)(C) of the Income Tax Act, 1961, [in short "IT Act"] being initiated separately. The Assessee, aggrieved by the said order of Assessment, filed an appeal before the Commissioner of Income Tax (Appeals)-4. The CIT(Appeals), Chennai, vide an order dated 30.08.2016 passed under Section 250(6) of the

IT Act, dismissed the appeal. The Assessee made further challenge by filing an appeal before the Income Tax Appellate Tribunal, "C" Bench, Chennai. The ITAT, Chennai, vide impugned order dated 08.02.2018, had allowed the appeal and challenging the same, the Revenue has filed the present appeal.

2.

2. This Appeal was entertained on 11.06.2019 by framing the following substantial question of law:

> "Whether the Tribunal was right in holding that deduction claimed U/s. 54F is to be granted for all the Nine flats even though the condition prescribed by the statute has not been fulfilled by the Assessee since possession has been taken after 3 years from the date of transfer of the original assets?"

3. Mr. T. Ravi Kumar, the learned standing counsel appearing for the Revenue would submit that in the light of the circular issued by the Income Tax Department under Section 268A of the IT Act, a decision has been taken not to prosecute the appeal, which is having the tax impact of less than one crore and admittedly a circular in this regard has also been issued and in the light of the fact that the tax assessed by the income tax officer is less than one crore, prays for appropriate orders.

4. In the light of the said circular, this Tax Case Appeal deserves dismissal and accordingly dismissed. However, the question of law is left open and it is to be decided in an appropriate proceedings.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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Copy to

1.The Income Tax Appellate Tribunal,
"C" Bench, Chennai.

2. The Commissioner of Income Tax (Appeals)-4,
121, Mahatma Gandhi Road, Chennai-600 034.

3. The Income Tax Officer,
Non Corporate Ward 16(3),
Chennai-34

+1cc to Mr.T. Ravi Kumar, Advocate SR.No.18477

MP(CO)
GMY(28/07/2020)