IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.241 of 2020

1. Smt.Nafeesa Beevi
2. Ms.Saleena Basheer
3. Ms.Sajeena
Legal heirs of late P.K.Mohammed ...Appellants

Vs

The Assistant Commissioner of Income Tax,
Non-Corporate Circle 7(1),
Chennai - 600 034. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 30.05.2019 made in ITA.No.3169/Chny/2018 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai for the assessment year 2013-14. Appeal filed against the order dated 23.08.2018 made in ITA.No.121/CIT(A)-7/16-17 on the file of the Commissioner of Income Tax(Appeals)-7, Chennai-34 for the assessment year 2013-14 against the order dated 31.03.2016 made in PAN/GIR No.AACPM7837R made in Assistant Commissioner of Income Tax Non-Corporate Circle 7(1), Chennai for the assessment year 2013-14.

For Appellants:Mr.V.S.Jayakumar

For Respondent:Mr.R.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal filed under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 30.05.2019 made in ITA.No.3169/Chny/2018 on the file of the Income Tax Appellate Tribunal, 'C' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2010-11.

2. The appeal was admitted on 28.08.2020 on the following substantial questions of law:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the claim of the appellant that he is not liable to tax is not justified?

2. Whether the Tribunal is right in law in holding that the profit arising on account of sale of property is to be taxed as 'income from profits and gains' ignoring the earlier order of the CIT(A), who has held that the profit should be considered under the head 'capital gain'?

3. Whether the Tribunal is correct in law in holding that the computation made by the appellant is not sustainable in law? and

4. Whether the order of the Tribunal is right in law and is perverse when it concluded that the expenditure claimed is not to be allowed under the head 'income from profit and gains' and not considering the head of income 'as capital gains' and allowing the expenses, in the alternative?"

3. We have heard Mr.V.S.Jayakumar, learned counsel appearing for the appellants/assessee and Mr.R.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent/Revenue.

4. The learned counsel for the appellants/assessee submits that the appellants have already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 27.12.2020 and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The appellants are given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

hvk

To

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

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle 7(1),
Chennai - 600 034.

3.The Commissioner of Income-Tax(Appeals)-7
Nungambakkam, Chennai-34.

+1cc to Mr.V.S.Jayakumar, Advocate SR.8628

TCA.No.241 of 2020

GMR(CO)
CB(10/03/2021)