IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.03.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

T.C.A.No. 788 of 2013

The Commissioner of Income Tax,
Chennai. ... Appellant

v.

M/s. True Value Homes (India) Pvt. Ltd
TVH Triveni,
21-CV Raman Road,
Alwarpet, Chennai - 600 018. ... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "D" Bench, dated 18.03.2013 in I.T.A.No.1324/Mds/2011 for the Assessment Year 2007-08.

against the order of the Commissioner of Income Tax (Appeals)-III, Chennai dated 15/04/2011 in ITA No.640/09-10/A-III, PAN No.AAACT7955Q for the Assessment Year 2007-2008 and against the order of the Additional Commissioner of Income Tax, Company Range III, Chennai dated 24/12/2019 in GIR No./PAN No.AAACT7955Q for the Assessment Year 2007-2008.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel
and Mrs. V. Pushpa

For Respondent : Mr.R.Sivaraman

JUDGMENT
(Judgment was delivered by M. DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.1324/Mds/2011 in respect of the Assessment Year 2007-08 on the file of the Income Tax Appellate Tribunal, Chennai, ''D'' Bench (for brevity, the Tribunal), the Revenue has filed the above appeal.

2.1 The assessee is a company engaged in the business of builders and promoters of residential flats.. The assessee filed its return of income for the assessment year 2007-08 admitting total income of Rs.7,70,49,470/-. The Assessing Officer determined the total income of Rs.19,68,09,740/- in the assessment order passed under section 143(3) of the Act. The taxable income has been determined by the assessing authority at a higher level by making additions on account of short term capital gains.

2.2 The assessee company had promoted a residential project about 45 kms. away from Chennai on Old Mahabalipuram Road. The assessee had identified about 25 acres of land to set up the project. The task of identifying and purchasing the land from different land owners was entrusted by the assessee to one Mr..Rajagopalan and the said Rajagopalan managed to procure 14.79 acres of land in favour of the assessee company. The assessee company purchased the entire 14.79 acres for a total consideration of Rs.4,41,38,500/-. The land was registered for a sum of Rs.1,38,82,000/-. But, the assessee had to pay an amount of Rs.1,86,61,000/- to the land owners over and above the guideline value. The land owners insisted that they could sell the land only at market price, therefore, in addition to the guideline value paid by the assessee and shown in the registered document, the assesssee also paid Rs.1,86,61,000/- as consideration outside the document. Further, the assessee could evict the unauthorised occupants after paying the compensation of Rs.1,15,95,500/-. Ultimately, the purchase cost int eh hands of the the assessee worked out to rs.4,41,38,500/- for purchase of 14.79 acres of land.

2.3 In order to execute the project in its original plan, the assessee also had to acquire a further extent of 2.96 acares of land. The total project was sold to M/s. MPC for a consideration of Rs.21,27,31,250/- A sum of Rs.9.79 cores was paid by M/s. MPC directly to M/s. Wondertech Software Pvty. Ltd., Shri Chakkubai and Shri Dhanapal, The said amount was paid as consideration for the execution of the sale deed by the assessee for a consideration of Rs.21,27,31,250/- However, the Assessing Officer did not accept all these figures while computing the short term capital gains as explained by the assessee. The Assessing Officer accepted the guideline value of Rs.1,38,82,000/- as the cost of acquisition the assessee. He disallowed the amount paid by the assessee in addition to the document value amount of Rs.1,86,61,000/- and also disallowed the compensation of Rs.1,15,95,500/- paid by the assessee to vacate the unauthorized occupants. The Assessing Officer also declined to give deduction for Rs.9.79 crores, directly paid by M/s. MPC to the three parties for acquiring 2.96 acres of land and adopted the entire sum of Rs.21,27,31,250/- as sale consideration. In these circumstances, the Assessing Officer determined the short term capital gain at Rs.16.71.16.850- as against Rs.,6,98,26,550/- declared by the assessee.

2.4 On appeal, the Commissioner of Income Tax (Appeals) allowed all the cost factors explained by the assessee and disallowed those cash payments made by the assessee by invoking section 40A(3) of the Act. The Assessing Officer has also made an addition of Rs.2,18,96,985/- towards retention money. On appeal, the Commissioner of Income Tax (Appeals) deleted the said addition made by the assessing Officer towards retention money.

2.5 Aggrieved over the order passed by the Commissioner of Income Tax (Appeals) , the Revenue has filed an appeal before the Income Tax Appellate Tribunal, and the Tribunal. dismissed the appeal and confirmed the order of the Commissioner of Income Tax (Appeals). Challenging the order passed by the Income Tax Appellate Tribunal, the Revenue has filed the above appeal.

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

> " (i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the disallowance made on account of short term capital gains charged on account of slump sale are not proper even though the assessee could not produce any documentary evidence?
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the retention money withheld is to be allowed even though the liability on account of it had nto crystallized during the present assessment year?"

4. When the appeal is taken up for hearing, Mr. M.Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the 2nd question of law raised in the above appeal is covered by the decisions of the Hon'ble Division Bench of this court reported in 2012(122) Taxmann.com 284(Madras) [Commissioner of Income Tax, Chennai v. Voltech Projects (P) Ltd.] wherein the Division Bench of this Court held as follows:-

> " ... 5. The short order passed by the co-ordinate Bench is quoted below for ready reference:-
>
> " The respondent-assessee is engaged in contract business and in the memo of income, it had claimed deduction of the amounts retained by its clients as per the contracts. According to the assessee, as the amounts were not received, they cannot be considered as part of income for the impugned assessment year. The original authority,

while considering the decision of this Court in Commissioner of Income Tax v. Ignifluid Boilers (P) Ltd., [(2006) 283 ITR 295)], was of the view that since the issue was pending before the Supreme Court and that such a claim is of recurring nature, declined to extend the benefit to the assessee. The Commissioner of Income Tax (Appeals), however, laying emphasis on the decision of this Court in Ignifluid Boilers (P) Ltd., case (supra), allowed the appeal of the assessee and the department's appeal before the Tribunal was dismissed holding that the decision of the jurisdictional High Court is binding on the Tribunal and therefore there was no reason to differ with the findings of the Commissioner of Income Tax (Appeals). The said order of the Tribunal is under challenge before us.

2. When the matter was taken up for admission, the learned counsel for the appellant fairly pointed out that the Special Leave Petition preferred by the department in C.C.No.4879 of 2006 against the decision of this Court in Ignifluid Boilers (P) Ltd., case was dismissed by the Supreme Court by order dated 17.7.2006.

3. Since the issue raised in this appeal had already been decided against the department by the Supreme Court in C.C.No.4879 of 2006 dated 17.7.2006 (Commissioner of Income Tax v. M/s Ignified Boilers India Ltd.) and in C.C.No.9463 of 2006 dated 12.12.2006 (Commissioner of Income Tax v. East Coast Constructions & Order dt 30.7.2020 in TCA 693 of 2019 CIT v . Voltech Projects Pvt. Ltd.Industries Limited), no question of law arises for consideration. Accordingly, the tax case appeal is dismissed."

6. The contraversy involved in the present appeal is covered by the said judgment. Respectfully following the said view of the coordinate Bench, we dismiss the present appeal of the Department and answer the questions in favour of the assessee and against the Revenue. No order to costs."

5. So far as the 1st question of law is concerned, on a careful consideration of the materials available on record, it could be seen that the revenue has not specifically doubted the

transaction and therefore, the Tribunal has come to the conclusion that the order passed by the Commissioner of Income Tax (Appeals) is proper and that of the Assessing Officer is erroneous. The payments made by Shri Chakkubai and Shri Dhanapal, as part of cost of acquisition, after having found that the entire consideration has been considered in the hands of the assessee company. While passing the assessment order, the Assessing Officer had erroneously left out some of the entires which necessitated the Commissioner of Income Tax (Appeals) to interfere with the assessment order. The order passed by the Commissioner of Income Tax (Appeals) is just and proper. Considering all these aspects, the Tribunal has rightly confirmed the order passed by the Commissioner of Income Tax (Appeals).

6. In these circumstances, we do not find any ground much less any substantial question of law to interfere with the order passed by the Tribunal. In view of the Judgment reported in 2012(122) Taxmann.com 284(Madras) [citeda supra] , the 2nd question of law is decided in favour of the assessee and against the Revenue. Hence, the Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj
To
1.The Income Tax Appellate Tribunal,
Chennai, ''D'' Bench.

2.The Commissioner of Income Tax, Chennai.

3.The Commissioner of Income Tax(Appeals)-III,
Chennai.
4.The Additional Commissioner of Income Tax
Company Range II, Chennai-34.
+1 cc to M/s.M.Swaminathan, Senior Counsel, Sr.No. 13492

T.C.A.No. 788 of 2013

SMI(CO)
RMP(15/04/2021)