

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.03.2021

CORAM:

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

T.C.A.No.882 of 2013

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

Vs.

M/s.True Value Homes (India) Pvt. Ltd
TVH Triveni, 21-CV Raman Road,
Alwarpet, Chennai - 600 018. ... Respondent/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.1843/Mds/2012 for the Assessment Year 2009-10. against the order of the Commissioner of Income Tax (Appeals)- III, Chennai, dated 09/07/2012, in ITA No.820/2011-2012/A-III for the Assessment year 2009-2010, against the order of the Assistant Commissioner of Income Tax, company circle -III(2), chennai-600 034, dated 30.12.2011 in CIR No./PAN AAAC77955Q for the Assessment year 2009-2010.

For Appellant : Mr. M.Swaminathan
Senior Standing Counsel

For Respondent : Ms.Sriniranjani Srinivasan

JUDGMENT

(Judgment was delivered by M. DURAI SWAMY, J.)

Challenging the order passed in I.T.A.No.1843/Mds/2012 in respect of the assessment year 2009-10 on the file of the Income Tax Appellate Tribunal, Madras, 'D' Bench, the Revenue has filed the above appeal.

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

"Whether on the facts and in the circumstances of the case, the Tribunal was right in upholding order of Commissioner of Income Tax (Appeals) in deleting the

disallowance made by the Assessing Officer under Section 36(1)(ii) of the Income Tax Act?"

3. When the appeal is taken up for hearing, Mr. M. Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the issue involved in the present appeal is covered by the decision of this Court dated 02.03.2021 made in T.C.A.No.873 of 2012 [The Commissioner of Income Tax, Chennai Vs M/s. True Value Homes (India) Pvt. Ltd, TVH Triveni, 21-CV Raman Road, Alwarpet, Chennai - 600 018], wherein we have held as follows:

"...

4. When the appeal is taken up for hearing, Mr. M. Swaminathan, learned Senior Standing Counsel appearing for the appellant fairly submitted that the issues involved in the present appeal are covered by the decision of this Court. The learned Senior Standing Counsel further submitted that so far as the 1st question of law is concerned, the same is covered by the decision of the Judgment of the Division Bench of the Delhi High Court reported in (2012) 20 Taxmann.com 647 (AMD Metplast Pvt Ltd v. Deputy Commissioner of Income Tax] wherein the Delhi High Court held as follows:-

"...10. We fail to understand how the aforesaid observations assist and help the Revenue in the factual matrix of the present case. Ashok Gupta is the Managing Director and in terms of the Board resolution is entitled to receive commission for services rendered to the company. It is a term of employment on the basis of which he had rendered service. Accordingly, he was entitled to the said amount. Commission was treated as a part and parcel of salary and TDS has been deducted. Ashok Gupta was liable to pay tax on both the salary component and the commission. Payment of dividend is made in terms of the Companies Act, 1956. Dividend has to be paid to all shareholders equally. This position cannot be disputed by the Revenue. Dividend is a return on investment and not salary or part thereof. Herein the consideration in the form of commission which was paid to Ashok Gupta was for services rendered by him as per terms of appointment as a Managing Director. In view of the aforesaid position, we answer the question of law in negative and in favour of the assessee and against the Revenue. The appeal is accordingly allowed. No costs".

5. So far as the 2nd question of law is concerned, the same is covered by the decision of the Hon'ble

Division Bench of this court reported in 2013(255) CTR 156 [Commissioner of Income Tax v. Sanghvi and Doshi Enterprise] wherein the Division Bench of this Court held as follows:-

" ... 32.This takes us to the second question as regards the completion certificate. As already pointed out in the preceding paragraphs, the assessee had evidently completed the construction as early as 05.03.2006, a fact which is not disputed by the Revenue. It is also an admitted fact that the approval was granted for construction, both by the Chennai Metropolitan Development Authority and the local authority, namely, Chennai Corporation. The letter of the Chennai Metropolitan Development Authority according sanction to the project as early as 23.9.2003 clearly points out that the sanction was also subject to the approval by the Corporation. Thus, with the planning details being subjected to the approval by the Corporation as the competent local authority and it having certified as to the completion as early as 28.12.2007, we are satisfied that the completion being on or before 31.3.2008, the reliance placed on Explanation (2) to reject the assessee's case could not be sustained. In any event, given the fact that the approval, which is an administrative process, is purely at the hands of the Statutory Authority concerned, over which, the assessee could not have any control, the Explanation cannot, in any manner, have a negative effect on a factual aspect of the matter, namely, completion of the construction. Thus, in a case like this, where, the local authority, being the Corporation, had already certified about the completion of the project as per the approved plan, the fact that one of the Authorities, namely, Chennai Metropolitan Development Authority had issued a letter only on 13.6.2008, per se, cannot negative the assessee's claim for deduction."

6.Further, the Commissioner of Income Tax (Appeals) in its order has observed that the return filed by Shri.Ravichandran that he has offered the entire commission for taxation and paid tax at the maximum marginal rate without claiming any deduction. Therefore, motive of tax avoidance is also absent.

7.On a careful consideration of the materials available on record and also the judgments cited supra, it is clear that both the questions of law are covered

by the judgments of the Delhi High Court and this Court. Following the same, we are of the view that both the questions of law have to be decided against the revenue. Accordingly, the questions of law are decided against the Revenue and in favour of the assessee. Hence, the Tax Case Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs."

4.Following the said judgment, the question of law is decided against the Revenue and in favour of the assessee. Hence, the Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

- 1)The Income Tax Appellate Tribunal, Chennai, 'D' Bench
- 2)The Commissioner of Income Tax(A)-III Chennai-
- 3)The Assistant Commissioner of Income Tax Company Circle- III(2) Chennai - 600 034.

+1cc to Mr. M.Swaminathan,Advocate, S.R.No.14395
+1cc to Mr.G.Baskar,Advocate, S.R.No.14333

T.C.A.No.882 of 2013

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