IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

TAX CASE APPEAL NOS.503, 505, 507 & 512 TO 515 OF 2019

Principal Commissioner of Income Tax Central 2,
No.108, Mahatma Gandhi Road,
Chennai - 600 034.

... Appellant in T.C.A.No.503, 505, 507 & 512 TO 515 OF 2019

Vs

M/s.RPD Earth Movers Pvt Ltd.,
No.1379, "Golden Villa", 1st Block,
6th Street, 18th Main Road,
Vallalar Kudiyeruppu, Anna Nagar West,
Chennai - 600 040.
PAN: AAD CR 6604 B

... Respondent in T.C.A.No.503 of 2019

M/s.Ganam Homes And Estates Pvt Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 18th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Ch-40

... Respondent in T.C.A.No.505 of 2019

M/s.SSD Homes And Developers Pvt.Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 18th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Chennai.

... Respondent in T.C.A.No.507 of 2019

M/s.Sangupathi Properties Pvt.Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 08th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Chennai., PAN AALCS4094A

... Respondent in T.C.A.No.512 of 2019

M/s.Anu Plot And Housing Pvt. Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 18th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Chennai-40.

... Respondent in T.C.A.No.513 of 2019

M/s.Vysa Plot and Housing Pvt.Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 18th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Chennai-40.

... Respondent in T.C.A.No.514 of 2019

M/s.Acharya Homes And Estates Pvt.Ltd.,
No.1379, Golden Villa, 1st Block,
6th St, 18th Main Road,
Vallalar Kudiyeruppu Anna Nagar,
West, Chennai-40.

... Respondent in T.C.A.No.515 of 2019

COMMON PRAYER:

Appeals under Section 260A of the Income Tax Act, 1961 against the orders dated 03.12.2018 made in ITA.Nos.1606 to 1612/Chny/2018 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, for the assessment year 2011-12.

Against the orders of the Commissioner of Income Tax (Appeals)-18, Chennai dated 23.02.2018 in ITA.Nos.225, 223, 229, 221, 231, 233, 227/16-17, in PAN.No.AADCR6604B, AADCG5334P, AALCS1774R, AALCS4094A, AAGCA9006R, AACCV6776H, AAHCA8990M on the file of the Assistant Commissioner of Income Tax Central Circle-2(2), Investigation Wing, Room No.109, 1st Floor, New No.46, M.G.Road, Chennai-34.

For Appellant (in all cases)	:	Mr.T.R.Senthil Kumar Senior Standing Counsel
For Respondents (in all cases)	:	Mr.R.Murali

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

These appeals have been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the orders dated 03.12.2018 made in ITA.Nos.1606 to 1612/Chny/2018 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, ('the Tribunal' for brevity) for the assessment year 2011-12.

2. The appeals were admitted on 26.07.2019 on the following substantial questions of law:

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Assessing Officer cannot initiate proceedings under Section 153A of the Income Tax Act where there was no incriminating material found during the course of search operation under Section 132 of the Act?
>
> ii. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in accepting the stand of the assessee that the audited tally statement, found during search and which formed the basis of search assessment, was filed along with the return of income for the assessment year 2011-12 without appreciating that the said return of income was e-filed and for that assessment year, annexureless return was only envisaged?
>
> iii. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in placing reliance on SLP dismissal simplicitor in the case of PCIT Vs. Meeta Gutgutia [reported in 96 Taxmann.com 468] when the issue of jurisdiction under Section 153A of the Income Tax Act was not at all before the Hon'ble Supreme Court in the said special leave petition? and
>
> iv. Whether, on the facts and circumstances of the case, the Appellate Tribunal was justified in deciding the impugned issue on the basis of SLP (special leave petition) dismissal simplicitor by the Hon'ble Supreme Court in the case of PCIT Vs. Meeta Gutgutia [reported in 96 Taxmann.com 468] without taking cognizance of the well settled ratio that SLP dismissal simplicitor has no binding effect as laid down in the cases of CIT Vs. Geetha Ramakrishna Mills (P) Ltd. [reported in 288 ITR 489 (Madras)] and Kunhayammed Vs. State of Kerala [reported in 245 ITR 360 (SC)]?"

3. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.R.Murali, learned counsel appearing for the respondents/ assessees.

4. The learned counsel for the respondents/assessees submit that the assessees have already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 01.12.2020 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 applications/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 assessees are given liberty to restore these appeals 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 assessees. 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 appeals and on such request made by the assessees by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeals stand 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

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To

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

2. Principal Commissioner of Income Tax Central 2,
   No.108, Mahatma Gandhi Road,
   Chennai - 600 034.

3. The Commissioner of Income Tax(Appeals)-18,
   46, Mahatma Gandhi Road, Nungambakkam, Ch-34.

4. The Assistant Commissioner of Income Tax,
Investigation Wing, Room No.109,
1st Floor, 46, M.G.Road, Ch-34.

+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.3975

TCA.Nos.503, 505, 507 & 512 to 515 of 2019

RGN(CO)
CS/18/03/2021