IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.13180 of 2020 &
WMP. No.16604 of 2020

Chinna Gounder Subramaniam
No.34, Harvey Road,
Tirupur 641 602 ...Petitioner

Vs.

1.Prinicpal Commissioner of Income Tax,2 Coimbatore
Income Tax Department
O/O The Commissioner of Income Tax
PCIT/CIT 2 Coimbatore

2.Asst. Commisioner of Income Tax
Circle-1 Tirupur ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified mandamus calling for the records of the 1st respondent in her proceedings leading to te passing of the order vide order no.C.No.321 (2)/ PCIT-2/che/2019-20 dated 16.03.2020 quash the same and further direct the 2nd respondent to pass order deleting the addition of Capital Gains on sale of Agricultural land for the AY 2016-17.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondents : Mr.A.P.Srinivas
Standing Counsel

ORDER

The challenge in this matter is to an order of revision passed by the Commissioner under Section 264 of the Income Tax Act, 1961 (in short 'Act') dated 16.03.2020 .

2. On 01.03.2021, I have passed the following order:

> The challenge is to an order of the Commissioner of Income Tax dated 16.03.2020 passed under Section 264 of the Income Tax Act, 1961 (in short 'Act') whereunder order of assessment dated 29.12.2018 stands confirmed.

2. The issue that arises is as to whether lands sold by the petitioner qualify for exemption and, from the levy of capital gains tax whether such lands would constitute a capital asset in terms of Section 2(14) of the Act. The first piece of land at Thekkalur, Avinashi is jointly held by the petitioner and his wife (11.4 acres of land) and the second piece of land at Guntur, Andhra Pradesh is jointly held by the petitioner along with one, R.Duraisamy (11.56 acres of land).

3. I am given to understand that the joint owners in both cases have filed first appeals before the Commissioner of Income Tax (Appeals) (CIT (A)). Appellate remedy is more appropriate in such cases as the powers of the first Appellate Authority are co-terminus with that of the Assessing Officer and facilitate more complete and comprehensive assimilation and appreciation of facts. The petitioner has, however, chosen to approach the Commissioner of Income Tax by way of revision.

4. A suggestion was made to the effect that the petitioner may be permitted to approach the CIT(A) by way of appeal to be heard along with the appeal filed by the petitioner's wife in one case and R.Duraisamy in the other and the petitioner has no objection to the same. Mr.A.P.Srinivas, learned Senior Standing Counsel seeks some time to obtain instructions in this regard. Mr.Srinivas will also ascertain whether both the appeals are yet pending.

5. List on 08.03.2021 immediately after admission.

3. Today Mr.A.P.Srinivas, learned Senior Standing Counsel submits written instructions issued by the Income Tax Officer, (H.Q.) (Judl) O/o PCIT-1, Coimbatore to the effect that the petitioner may be permitted to file an appeal before the Commissioner of Income Tax (Appeals) (CIT (A)) to be heard along with the appeal of the petitioners' wife which is pending before the CIT(A), Coimbatore for which the following reference is given 'CIT(A)-Form No.35 Ack. No.411649720220119 dated 22.01.2019'. He would also submit that no appeal has been filed by R.Duraisamy as against the addition made in his case.

4. In the light of the aforesaid, the petitioner is permitted to file an appeal before the CIT (A) within a period of four weeks from today. Since the original of the order of assessment dated 29.12.2018 has been filed along with revision

petition, production of the same before the CIT (A) shall be dispensed and the petitioner is permitted to approach the CIT (A) along with a certified copy of the order of assessment dated 29.12.2018.

5. With the passing of the above order, this writ petition is rendered infructuous, and is dismissed as such. Connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Prinicpal Commissioner of Income Tax,2 Coimbatore
Income Tax Department
O/O The Commissioner of Income Tax
PCIT/CIT 2 Coimbatore

2.The Asst. Commisioner of Income Tax
Circle-1 Tirupur

+1 CC to Mr.A.P.Srinivas, Advocate sr 14525.

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PMK(CO)
SP(18/03/2021)