IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2021

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal No.600 of 2018
&
CMP.Nos.12015 & 12016 of 2018

M/s.Tamilnadu Brick Industries,
No.47, Mangali Nagar 1st Street,
Arumbakkam, Chennai 600 106. ... Appellant

Vs.

The Income Tax Officer,
Non-Corporate Circle-8(1),
Chennai 600 106 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 11.5.2018 passed in I.T.A.No.744/Chny/2017.

For Appellant : Mr.S. Sridhar

For Respondent : Mr. Karthik Ranganathan
Standing Counsel

JUDGMENT

(Judgment was delivered by R. MAHADEVAN, J.)

This Tax Case Appeal has been filed by the appellant / Assessee challenging the order dated 11.05.2018 passed by the Income Tax Appellate Tribunal, Chennai "D" Bench, ('the Tribunal' for brevity) in I.T.A.No.744/Chny/2017 for the assessment year 2013-14.

2. The above appeal has been filed raising the following Substantial Questions of Law: :

*"**1.** Whether the provisions in Section 2(47)(v) of the Income Tax Act, 1961 read with section 53A of the Transfer of Property Act, 1882 would be applicable for reckoning deemed transfer for unregistered joint development agreement backed by the registered general power of attorneys in the context of computation of Long Term Capital Gains?*

2. Whether the Appellate Tribunal is correct reckoning the deemed transfer in terms of section 2(47)(v) of the Income Tax Act based on the unregistered joint development agreement backed by the registered general power of attorneys despite the starting point for the transaction as captured in the Memorandum Of Agreement dated 30.01.2012 falling within the immediately preceding assessment year 2012-13?

3. Whether the recitals in the document of joint development agreement indicating the commencement of the business operations on obtaining NOCs would be relevant for *determining the date of deemed transfer in terms of section 2(47)(v) of the Income Tax Act as against the mechanical determination fo such deemed transfer based on the date of execution of unregistered joint development agreement backed by general power of attorneys??*

4. Whether the provisions of section 45(2) of the Act which prescribe different computation for assessment of profits based on the treatment of the capital asset as business asset would override the deemed transfer in section 45(1) read with section 2(47)(v) of the Act?

5. Whether the registered general power of attorneys would negate the applicability of the law laid down by the Supreme Court in the case of Balbir Singh Maini (Civil Appeal No.15619/2017 dated 04.10.2017) despite the powers given to the developer being only in relation to the powers for executing the transaction of the joint development while not transferring the property rights?

6. Whether the taxation of Long Term Capital Gains notionally is legally justified despite the law laid down by the Supreme Court in the case of Balbir Singh Maini in relation to taxation of real income in the context of deemed transfer within the scope of section 2(47)(v) of the Act read with section 53A of the T.P.Act, 1882?

7.Whether the adoption of stamp duty value applicable from 1.4.2012 as the sale consideration for taation of Long Term Capital Gains notionally while overlooking the doctrine of 'relating back' for adopting the stamp duty value available prior to 1.4.2012 in view of the starting point of the transaction based on the Memorandum of Agreement dated 30.01.2012 is correct in law?"

3. When the matter was taken up for consideration, the learned counsel appearing for the appellant / assessee submitted that during the pendency of

this tax case appeal, the assessee has filed the requisite Forms 1 and 2 under Section 4 of the Direct Tax Vivad Se Vishwas Act, 2020, which were accepted and Form 3 was issued to the assessee on 10.02.2021 by the Income Tax Department. The learned counsel has also filed memo, dated 21.10.2021 to that effect.

4.The aforesaid submission made by the learned counsel for the appellant/assessee has also been fairly conceded by the learned standing counsel appearing for the respondent/ Revenue.

5.This court heard the submissions made by the learned counsel on either side, as per which, the assessee has already availed the benefit conferred under the beneficial legislation viz., the Direct Tax Vivad Se Vishwas Act, 2020, enacted for resolution of disputed tax and for matters connected therewith or incidental thereto, which came into force with effect from 17.03.2020; and the declarations submitted by them were also accepted and Form 3 was also issued to the assessee by the Income Tax Department. In view of such development, it is unnecessary for this court to decide the substantial questions of law arisen in this tax case appeal.

6.Therefore, recording the submissions so made by the learned counsel on either side, this appeal stands disposed of, directing the department to process the application at the earliest in accordance with the Act and communicate the decision to the assessee at the earliest. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.M.D., J.)   (M.S.Q., J.)
11.11.2021

msr
Internet : Yes
Index : Yes / No

To

1.The Income Tax Appellate Tribunal,
Madras "D" Bench,

2.The Income Tax Officer,
Non-Corporate Circle-8(1),
Chennai 600 106

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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