IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14031 of 2014
and
M.P.No.1 of 2014

G.P.Savithri ... Petitioner

Vs.

The Income Tax Officer,
Business Ward XII(3),
7th Floor, KannamaI Building,
611, Mount Road, Chennai - 600 006. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records in impugned order passed by the respondent in BDIPS8011B/BWXII(3)/154/2012-13 dated 14.02.2014 and consequential demand dated 15.05.2014 in No.XII (3) BDIPS8011B/2014-15 on the file of the respondent and quash the same.

For Petitioner :Mr.A.Thiagarajan, SC
Mr.S.Ramesh Kumar
For Respondent :Mr.Prabhu Mukunth Arun Kumar for
M/s.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner has challenged the impugned order giving effect to the order passed by the Tribunal on 07.02.2013. By the said order, the Tribunal had remitted the case back to the original authority namely Assessing Authority to pass order in accordance with law after giving adequate opportunity to the petitioner.

2.The Tribunal also remitted back to the petitioner's cross objection to the Assessing officer. Under these circumstances the respondent filed an application for rectification under Section 254 of the Income Tax Act before the Tribunal to rectify certain errors on the face of the record in the order passed on

07.02.2013 in I.T.A.No.722/Mds/2012 for the Assessment Year:2007-2008.

3.The Tribunal by its order dated 13.01.2014 after extracting the order passed on 17.02.2013 ultimately held as under:-

> A persual thereof makes it clear that though the matter has been sent to the Assessing Officer, it has not been specifically clarified to the Assessing Officer as to whether he could tax the impugned capital gains or not. In this regard, we deem it proper to clarify that once the division bench of the hon'ble high Court vide order dated 21.07.2009 has overruled the order of the Single judge datd 15.10.2008 nullifying the impugned sale dated executed by the assessee dated 09.08.2006, the net effect is that the sale deed is in force and the capital gains in question can be taxed in the impugned assessment year. Whilst holding so, we take notice of the fact that once the sale deed stands restored as a consequence of the judgment dated 21.07.2009, necessary implications have to follow under the provisions of the Act as per law.

4.The impugned order passed by the respondent giving effect to the order dated 7.2.2013 without taking note of the subsequent order dated 13.01.2014 is challenged as it has been passed ignoring order dated 07.02.2013.

5.Defending the impugned order of the respondent, learned counsel for the respondent submits that the Tribunal had clarified the position in the light of the decision of the Division Bench of this High Court on 21.07.2009 which nullified the cancellation of sale deed executed by the assessee namely the petitioner herein resulted in the sale having been completed and therefore there was capital gains in the hands of the petitioner. It was therefore submitted that there is no regularity in the impugned order.

6.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7.I have considered the arguments advanced by the learned counsel for the petitioner and respondent and the impugned order. The impugned order which has been challenging the present writ petition has been passed as a consequential order to order dated 07.02.2013. In the said order was clarified by an dated 13.01.2014. The Tribunal has merely clarified the position of law in the facts of the case as discussed above. The Tribunal has merely allowed the application filed by the respondent for a direction to consider and direct the respondent to tax the capital gains in the hands of the petitioner in terms of the decision of this High Court on 21.07.2009. The Tribunal has not clarified that in the light of the clarifications given in its order dated 13.1.2014, assessing officer was not required to pass a fresh order in terms of its order dated 07.02.2013. Therefore, there is no merits in the impugned order. It is liable to be quashed.

8.Under these circumstances, the impugned order stands quashed. The respondent is directed to pass a fresh order in terms of the Tribunal possession dated 07.03.2013 as clariffied vide order dated 13.01.2014. Since the dispute pertains the assessment year 2007-2008, the Assessing Officer is directed to pass appropriate orders within a period of three months from the date of receipt of this order and thereafter proceed to recover tax if any in accordance with law.

9.Needless to state, before passing such order, the petitioner shall also heard in person or through video conferencing.

10.Writ petition stands allowed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
The Income Tax Officer,
Business Ward XII(3),
7th Floor, KannamaI Building,
611, Mount Road, Chennai - 600 006.

+1cc to M/s.Hema Muralikrishnan, Advocate Sr.5662
+1cc to M/s.S.Ramesh Kumar, Advocate Sr.5821

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srg 05/03/2021