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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. No.579 of 2014

Commissioner of Income Tax,
Central Circle,
Chennai.

... Appellant/Respondent

Vs.

M/s.Adityaram Properties (P) Ltd.,
No.14, Ambadi Road,
Kotturpuram,
Chennai - 600 085.

... Respondent/Appellant

Tax Case Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order, dated 20.01.2011, passed by the Income Tax Appellate Tribunal, Chennai "D" Bench, in I.T.A.No.744/Mds/2010, for the Assessment Year 2007-08 against the order of the Commissioner of Income tax (Appeals)-III at Chennai dated.30.03.2010 in ITA No.182/09-10/A-III Pertaining to Asst.Year 2007-2008 against the order of the Deputy Commissioner of Income Tax(circle I(1)) Chennai, dated.30.10.2009 in PA/GIR No.AAACB2216N.

For Appellant : Mr.T.R.Senthil Kumar
Senior Standing Counsel
and Mrs.K.G.Usha Rani
Standing Counsel

For Respondent : Mr.R.Venkata Narayanan
for M/s.Subbaraya Aiyar Padmanabhan

J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

This Tax Case Appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity), is directed against the order, dated 20.01.2011, passed by the Income Tax Appellate Tribunal, Chennai "D" Bench, in



I.T.A.No.744/Mds/2010, for the Assessment Year 2007-08.

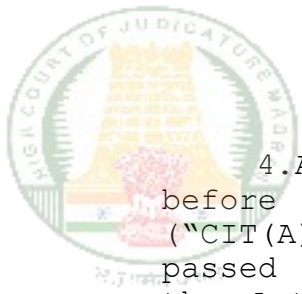
2.The appeal was admitted on 02.09.2014 on the following substantial questions of law :

"1.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the price for the land purchased and paid to the Director was not excessive while comparing with the fair market value of the land which was Rs.1.36 Lakhs per cent?

2.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that long term capital gain is not leviable on the lands sold and the provisions of Section 40A(2)(b) are not applicable?

3.Whether on the facts and circumstances of the case, the Tribunal was right in upholding the order of CIT(A) by allowing the expenditure on purchase of land at Rs.2.75 Lakhs per cent was proper?"

3.The respondent/assessee is a company engaged in Real Estate Development and they filed return of income for the Assessment Year under consideration, i.e., AY 2007-08, on 14.11.2007, declaring 'NIL' income. The return was initially processed under Section 143(1) of the Act and subsequently, the case was selected for scrutiny and notice under Section 143(2) was issued. The Assessing Officer found that the assessee had purchased land to the cost of Rs.19.51 Crores and the total cost of the land sold during the year and debited to profit and loss account was Rs.8,01,61,275/-. The assessee was directed to furnish details of the land purchased by them. On details being furnished, the Assessing Officer came to know that the assessee company had purchased larger extent of land from its two Directors/shareholders at the rate of Rs.3 Lakhs per cent. Ultimately, these lands, which were purchased, were sold to third party buyers as many as 41 of them. The Assessing Officer found that the lands have been sold by the assessee in the year under consideration at the rate of Rs.1.36 Lakhs per cent, which is far less than the Guideline Value which was 1.75 Lakhs per cent at the relevant point of time, which is far far less than the selling price paid to the Directors, which was Rs.3 Lakhs per cent. Therefore, the Assessing Officer held that the assessee company has incurred expenditure in respect of the payment which has been made to the Directors and the expenditure is excessive and unreasonable and therefore, invoked the provisions of Section 40A(2)(b) of the Act and completed the assessment vide order dated 30.10.2009.



4. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-III, Chennai ("CIT(A)" for brevity). So far as the correctness of the order passed by the Assessing Officer invoking Section 40A(2)(b) of the Act is concerned, the CIT(A) granted the relief to the assessee, however, the CIT(A) directed the Assessing Officer to allow the expenditure on purchase of land @ Rs.2,75,000/- per cent and to disallow @ Rs.25,000/- per cent, which was paid to the Directors.

5. Aggrieved by the said order, the Revenue as well as the assessee filed appeals before the Tribunal. The appeal filed by the Revenue was numbered as I.T.A.No.744/Mds/2010 and the appeal filed by the assessee was numbered as I.T.A.No.812/Mds/2010. The Tribunal, by the impugned common order, dismissed the appeal filed by the Revenue and allowed the appeal filed by the assessee.

6. The Revenue, aggrieved by the dismissal of their appeal by the Tribunal which was numbered as I.T.A.No.744/Mds/2010, has preferred the above Tax Case Appeal.

7. We have elaborately heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel for the appellant/Revenue and Mr.R.Venkata Narayanan, learned counsel appearing for M/s.Subbaraya Aiyar Padmanabhan, counsel for the respondent/assessee.

8. The sole reason for which the Assessing Officer invoked Section 40A(2)(b) of the Act is for the reason that the Directors of the company were paid Rs.3 Lakhs per cent for the purchase of the land, whereas, the lands have been sold by the assessee to about 41 purchasers with an average selling price at Rs.1.36 Lakhs per cent of land, and therefore, the expenditure incurred by the assessee company for payment of the sale price to the Directors is exorbitant and accordingly, Section 40A(2)(b) of the Act would stand attracted. The CIT(A), while considering the correctness of the said finding, has examined the entire facts in a very elaborate manner and found that the assessee had paid a sum of Rs.3 Lakhs per cent for the land purchased from its Directors, which was sold to third parties during the year under consideration at the rate of Rs.1.36 Lakhs per cent, however, in the subsequent years, it was sold @ Rs.2.72 Lakhs per cent and thereafter, at Rs.6.36 Lakhs per cent. Thus, taking into consideration the totality of the circumstances and that the decision taken by the assessee was a business decision and taking note of the latest sale price, the assessee had a substantial gain of Rs.19 Crores, the CIT(A) granted relief to the assessee. However, the CIT(A) directed the Assessing Officer to allow the expenditure @ Rs.2,75,000/-

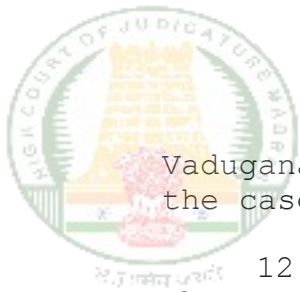


per cent and disallow @ Rs.25,000/- per cent.

9. We find from the order of the CIT(A) that there is no reason given by the CIT(A) for disallowing Rs.25,000/- per cent. This finding would run contrary to the finding recorded by the CIT(A) in Para No.6.4 of the order dated 30.03.2010, wherein, the assessee was granted relief and on facts it was held that the decision for purchase of land from the Directors at Rs.3 Lakhs per cent was a business decision and it was shown before the CIT(A) that the assessee company benefited out of the said decision and substantial profits were earned by the assessee company. Thus, the Tribunal was right in setting aside the portion of the order passed by the CIT(A) disallowing the sum of Rs.25,000/- per cent.

10. The learned Senior Standing Counsel for the appellant/Revenue placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of V.S.T. Motors Ltd. v. Commissioner of Income Tax reported in (2004) 135 Taxman 91 (Mds). In the said case, the assessee company carried on business as agents of certain truck manufacturers and maintained a stock-yard and had engaged a transport firm for the purpose of transporting trucks from the stock-yard to the showroom and delivering to customers. The Assessing Officer as well as the Appellate Authority disallowed a part of the transportation charges paid to the said firm as excessive under Section 40A(2) of the Act on finding that the owners of the firm were the Directors of the assessee company and close relative of the other Directors. On facts, the Hon'ble Division Bench found that the provisions of Section 40A(2) of the Act would stand attracted. In the instant case, the assessee has been able to show that the decision for purchase of land @ Rs.3 Lakhs per cent was a prudent business decision, as the assessee was able to earn substantial profit on account of the sale of the land to various third parties at much higher price @ Rs.6.36 Lakhs per cent. Therefore, we find that the decision is distinguishable on facts.

11. Reliance has been placed on the decision of the Division Bench of this Court in the case of Vaduganathan Talkies vs. Income Tax Officer, Non-Corporate Ward 20(5), Chennai-34 reported in [2020] 120 taxmann.com 25 (Madras). In the said case, the assessee company had made cash payment for the purpose of acquiring rights to screen movies in theatres, which ran to several lakhs of rupees, though payees were identifiable, and since inspite of availability of Banking facility, the assessee had been regularly effecting cash payments, the said payments were disallowed in terms of Section 40A(3) of the Act r/w. Rule 6DD of the Income Tax Rules, 1962. The case on hand is couched entirely on different factual settings and the decision in



Vaduganathan Talkies (supra) cannot be applied to the facts of the case on hand.

12.The learned counsel placed reliance on the decision of the Hon'ble Division Bench of this Court in Patterson & Co. (P.) Ltd. vs. Deputy Commissioner of Income-tax, Company Circle V(1), Chennai reported in [2019] 105 taxmann.com 150 (Madras). In the said case, the genuineness of the transactions was in question, but so far as the case on hand is concerned, genuineness of transaction has not been questioned, but the only reason invoking Section 40A(2)(b) of the Act is of the ground that the lands which were purchased from the Directors at Rs.3 Lakhs per cent have been sold at Rs.1.36 Lakhs per cent. The assessee has given more than one explanation for such a decision. Firstly, because, the assessee company owns the land behind the lands owned by the Directors and if the lands owned by the Directors are purchased, then it would give better access to the land owned by the company and it will be a good decision of the company to improve its financial well being. These decisions are all commercial decisions, which have to be taken by the assessee, and it is not for the Assessing Officer to sit in the arm-chair of the assessee and suggest the ways and means to run their business as long as there is no unlawful activity, which has been alleged to have been done by the assessee. Thus, we are of the considered view that the Tribunal was right in affirming the order passed by the CIT(A) holding that the decision to purchase the lands @ Rs.3 Lakhs per cent from the Directors was a prudent commercial decision taken by the assessee company.

13.Thus, for the above reasons, we find no ground to interfere with the order passed by the Tribunal. In the result, this Tax Case Appeal filed by the Revenue is dismissed and the substantial questions of law are answered against the Revenue. 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,
Central Circle,
Chennai.

3. Deputy Commissioner of Income-tax,
Company Circle I(1), Chennai

4. The Commissioner of Income Tax
(Appeals III), Chennai

+1CC to Mr.T.R.Senthilkumar, SSC in Sr.No.41565

+1CC to Mr.Subbaraya Aiyar, Advocate, Sr.No.41933

T.C.A. No.579 of 2014

SRA (CO)

K.RK. (17.09.2021)