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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.06.2021

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

T.C.A.Nos.289 & 290 of 2017

Principal Commissioner of Income Tax-4,
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

... Appellant in both TCAs

Vs.

T.T.Siddarth
Maya Varadarajan

... Respondent in TCA.289/17
... Respondent in TCA.290/17

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "C" Bench, dated 11.05.2016 in I.TA.Nos.2074 & 2075/Mds/2015 for Assessment Year 2012-13 against the proceeding of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA No.122/2014-15 and ITA No.121/2014-15 respectively dated 14.09.2015 against the order of the Deputy Commissioner of Income Tax Corporate Circle 4(1), Chennai PAN/GIR No.CPNPS7361L and PAN ACJPV8425H dated 28/02/2015 for the assessment year 2012-13.

For Appellant : Mr.Karthik Ranganathan,
(in both TCAs) Senior Standing Counsel

For Respondent : Ms.A.Janane
(in both TCAs)

COMMON JUDGMENT

(Judgment was delivered by M.DURAI SWAMY, J.)

Challenging the common order passed in I.TA.No.2074/Mds/2015 and I.T.A.No.2075/Mds/2015 on the file of the Income Tax Appellate Tribunal, Chennai, "C" Bench in respect of the Assessment Year 2012-13, the Revenue has filed the above appeals.

2.The respondents in the above two appeals are different assesseees. Since the issues involved in these appeals are common in nature, the above appeals are clubbed together, heard together and disposed of by this common judgment. The Income Tax Appellate Tribunal also disposed of both the appeals filed by the respondents herein by its common order.



3. In the Assessment Year 2012-13, the respondents-assesseees, while filing the return of income on 29.08.2012, claimed exemption under Section 54F of Rs. 8 crores and Rs.36.99 crores. During the course of the assessment proceedings, the Assessing Officer found that the assesseees had been gifted "Trade Mark" by way of Settlement Deed dated 19.12.2010 by Mrs.Malathi Rangaswami and Mr.T.T.Varadarajan. Trade Mark being a capital asset, settled without any consideration of money or money's worth and was transferred out of natural love and affection to the assesseees. The assesseees claimed exemption under Section 49(1)(ii) of the Income Tax Act. Since the period during which the previous owners held the right over the Trade Mark was also to be considered for deciding whether the asset is of long term capital asset, the Assessing Officer in the assessment order under Section 143(3) has rejected the assesseees' claim for deduction under Section 54F by treating the period of holding of the assets as short term gain. The Assessing Officer disallowed the claim under Section 54F made by the respondents-assesseees. Aggrieved over the order passed by the Assessing Officer, the assesseees filed appeals before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) has confirmed the disallowance made by the Assessing Officer and dismissed the appeals filed by the assesseees. Challenging the same, the assesseees preferred the appeals before the Income Tax Appellate Tribunal and the Tribunal, by its common judgment, remitted the matters to the Assessing Officer to determine the period of hold of the impugned capital assets and decide the issue afresh. Challenging the common order passed by the Tribunal, the Revenue has filed the above appeals.

4. The appellant-Revenue has raised the following substantial questions of law in the above appeals:

1. Whether on the facts and circumstances of the case and in law, Tribunal was right and justified in holding that assessee is eligible for deduction u/s 54F when the capital asset transferred was not a long term capital asset in view of Section 2(29A) r.w.s.2(42A) of the Income Tax Act?
2. Whether on the facts and circumstances of the case and in law, Tribunal erred in treating the asset held by assessee for less than four months as long term capital asset as against stipulation in Sec.2(29A) r.w.s 2(42A) is holding for more than 36 months?
3. Whether on the facts and circumstances of the case and in law, Tribunal was correct and justified in holding that Expl.1(b) below sec.2 (42A) is applicable and the period of holding of the asset by the previous owner also needs to be considered even though assessee did not receive



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the asset through gift or will as mentioned in sec.49(i)(ii) but by settlement deed?

4. Whether on the facts and circumstances of the case and in law, Tribunal erred in holding that there is no legal differences between settlement and gift overlooking the detailed discussion made by Commissioner of Income Tax (A) in his order?

5. When the appeals are taken up for hearing, Mr. Karthik Ranganathan, learned senior standing counsel appearing for the appellant-Revenue fairly submitted that the issues involved in the above appeals were already decided against the Revenue by the Hon'ble Division Bench of this Court in its judgment dated 07.12.2020 made in T.C.A.No.420 of 2020 [The Principal Commissioner of Income Tax, Chennai - 34 Vs. Smt. Deepa Vijay] wherein the Division Bench held as follows:

"...

2. The Revenue has filed the above appeal by raising the following substantial questions of law:

"i. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right and justified in holding that the assessee is eligible for deduction under Section 54F when the capital asset transferred was not long term capital asset in view of Section 2(29A) read with Section 2(42A) of the Act?

ii. Whether, on the facts and in the circumstances of the case and in law, the Tribunal erred in treating the asset held by the assessee for less than four months as long term capital gain asset as against stipulation in Section 2(29A) read with Section 2(42A) is holding for more than 36 months? And

iii. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right and justified in holding that Explanation 1(b) of Section 2(42A) is applicable and the period of holding of the asset by the previous owner also needs to be considered even though the assessee did not receive the asset through gift or will as mentioned in Section 49(1)(ii) but by settlement deed?"

3. We have heard Mr. Karthik Ranganathan, learned Standing Counsel appearing for the appellant/Revenue and Mr. R. Vijayaraghavan, learned counsel appearing on behalf of the respondent/assessee.

4. The assessee, who is an individual, filed the return of income for the assessment year under consideration namely AY 2012-13 on 29.8.2012 by showing income from salaries at Rs.12 lakhs. In fact, the income returned by the assessee included



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the long term capital gains to the tune of Rs.16,49,71,644/- after claiming deduction of Rs.3,50,28,356/- under Section 54F of the Act. It came to the notice of the Assessing Officer during the course of assessment proceedings that the assessee received a gift of a trademark from one Mrs.Malathi Rangaswamy and one Mr.T.T.Varadarajan through a document titled as settlement deed dated 19.12.2010.

5. The Assessing Officer considered the said capital asset as a short term capital asset as per the definition under Section 2(42A) read with Section 49(1) of the Act since the assessee held the trademark for a period of less than four months. The assessment was accordingly completed under Section 143(3) of the Act by order dated 19.3.2015 disallowing the deduction claimed by the assessee under Section 54F of the Act, considered the long term capital asset declared by the assessee to the tune of Rs.16.49 crores as short term capital gains and rejected the claim of Rs.3,50,28,256/- under Section 54F of the Act.

6. As against the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-8, Chennai-34 [for short, the CIT(A)]. The appeal was allowed by order dated 28.3.2018. Questioning the correctness of the same, the Revenue filed an appeal before the Tribunal and it was dismissed by the impugned order.

7. Going by the said document dated 19.12.2010, which was titled as settlement deed, the Assessing Officer held the same to be not a gift. The correctness of this finding was tested by the CIT (A), who, in our opinion, had done an elaborate factual exercise, gone through the covenants and conditions contained in the said document dated 19.12.2010 and held that the said document was only a deed of gift because it was voluntary as there was no consideration passed on and the donee accepted the gift unconditionally. The correctness of the factual finding was tested by the Tribunal, which had also gone through the issue in detail, taken note of the decision of the same Tribunal in the case of other owners namely Shri T.T.Siddharth and Smt.Maya Varadarajan [ITA.Nos.2074 and 2075/Mds/2015 dated 11.5.2016] and dismissed the appeal filed by the Revenue in this regard.

8. On going through the orders passed by both the CIT(A) as well as the Tribunal, we find that the entire issue deeply revolves around the factual matrix, which, in our considered view, has been thoroughly examined by the CIT(A) and the Tribunal and we also find that no question of law much less substantial question of law arises for consideration



in this appeal."

6.The learned counsel appearing for the respondents-
assesseees also submitted that in view of the judgment of the
Division Bench of this Court made in T.C.A.No.420 of 2020, the
above appeals are liable to be dismissed.

7.Having regard to the submissions made by the learned
counsel on either side, following the ratio laid down by the
Hon'ble Division Bench of this Court dated 07.12.2020 made in
T.C.A.No.420 of 2020, the questions of law are decided against
the Revenue and in favour of the assesseees. Accordingly, the
Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar(VI)

//True copy//

Sub Assistant Registrar

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To

- 1.The Income Tax Appellate Tribunal,
Chennai, "C" Bench
2. The Deputy Commissioner of Income Tax,
Corporate Circle IV(1), Chennai.
3. The Commissioner of Income Tax (Appeals)-8
Chennai.
4. The Principal Commissioner of Income Tax-4
No.121, Mahatma Gandhi Road, Chennai-34.

T.C.A.Nos.289 & 290 of 2017

RK(CO)
GMY(15/07/2021)