IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.No.53 & 54 of 2011

Commissioner of Income Tax Circle V
Chennai. ...Appellant in both T.C.As

Versus

Shri.Vijayakumar Gauhar,
No.273, Vijay Bhagyam Construction,
403A,Velacherry Main Road,
Velacherry, Chennai - 42. ...Respondent in both T.C.As

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, “B” Bench, dated 09.09.2010 in I.TA.Nos.1133 & 1134/Mds/2010 and against the order of the Commissioner of Income Tax (Appeals)-VIII, Chennai-34 dated 08/04/2010 and made in ITA No.70 & 69/08-09 against the order of the Assistant Commissioner of Income Tax, Business Range-V, Chennai-34 dated 24/12/2008 in PAN No.AADPG3022B for the Assessment year 2005-06 & 2006-07.

For Appellant for both T.C.As : Mrs.R.Hemalatha, Senior Standing Counsel

For Respondent : Mr.R.Sivaraman (T.C.A.No.53 of 2011)
Mr.T.N.Seetharaman (T.C.A.No.54 of 2011)

C O M M O N J U D G M E N T

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

These tax case appeals have been filed by the appellant / Revenue, challenging the order dated 09.09.2010 passed by the Income Tax Appellate Tribunal, Bench 'B', Chennai, in I.T.A.Nos.1133 & 1134/Mds/2010, relating to the assessment years 2005-06 and 2006-07.

2.By order dated 01.03.2011, this court admitted the aforesaid tax case appeals on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the action of the Assessee in developing residential apartments was not in the nature of business vide its order in I.T.A.No.796/Mds/2008 dated 06.05.2009 and thereby dismissing the Revenue's appeals in I.T.A.Nos.1133 and 1134/Mds/2009?"

3.When the matters were taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). It is also submitted that the tax effect in these appeals are less than the threshold limit.

4.In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, these appeals, wherein, the tax effect is said to be less than the monetary limit imposed, are dismissed as withdrawn, keeping open the substantial question of law for determination in appropriate cases. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vm/kas

To

1.The Income Tax Appellate Tribunal,
Chennai, "B" Bench.

2.The Commissioner of Income Tax (Appeals)-VIII
Chennai.

3.The Commissioner of Income Tax,
Business Range-V, Chennai-34.

+1cc to Mr.T.Ravikumar, Advocate SR. No. 7767

T.C.A.No.53 & 54 of 2011

SSD (CO)
PR (24/02/2022)