IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

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

T.C.A. No. 47 of 2013
and
M.P.Nos.1 and 2 of 2013

M/s. Prime Urban Development India Limited,
110, Avinashi Road,
Gandhi Nagar Post,
Tirupur - 641 603. ... Appellant/Respondent

Versus

The Income Tax Officer,
Ward - I(4), Tirupur ... Respondent/Appellant

Prayer: Appeal preferred under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 14.12.2012 passed in I.T.A.No.1795 (mds)/2012 against the order of the Commissioner of Income Tax (Appeals) II, Coimbatore, dated 27.09.2012 passed in I.T.A.No.145/11-12 and against the order of the Income Tax Officer, Ward I(4), Tirupur, dated 30.12.2011 passed in PAN No.AABCP9571D of Assessment Year 2009-10.

For Appellant : Mr.N.Muthukumar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel

JUDGMENT

(Judgment of the court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / assessee, challenging the order of the Income Tax Appellate Tribunal "B" Bench, Chennai, dated 14.12.2012 passed in I.T.A.No.1795/Mds/2012, relating to the assessment year 2009 - 10.

2.By order dated 25.02.2013, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

> "1.Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal is right in holding that there was a transfer of FSI and development rights being Rs.30.50 crores within the meaning of clause (47) of Section 2 of the Income Tax Act, 1961?
>
> 2. Whether in the facts and circumstances of the case, the Tribunal is right in holding that the doctrine of part performance as envisaged in Section 2(47)(v) could be attributed to the transaction entered into, when the appellant was constrained by law from handing over possession to the buyer?
>
> 3.Whether in the facts and circumstances of the case, the Tribunal is right in law and fact in not addressing all the grounds in the order of the Commissioner of Income Tax (Appeals) more particularly in the grounds raised in 5(a) and 5(b)?
>
> 4.Whether in the facts and circumstances of the case, the Tribunal is right in holding that the sale of FSI and development rights treated as business is to be changed as capital gains as the transaction is a colourable device despite the fact that there was no transfer of land as envisaged by the Income Tax Act, 1961 and the Transfer of Property Act, 1882.
>
> 5. Whether having regard to the powers and jurisdiction of the commissioner of Income Tax (Appeals) under Section 251 of the Income Tax Act, 1961, it is open to him to treat the sum of Rs.30.50 crores as capital gains when it was treated by the appellant and the Assessing Officer as income from business?
>
> 6.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in law in sustaining the addition of interest under Section 234B of the Income Tax Act, 1961 since a charge was not created by the

Assessing Officer as part of the order?"

3.When the matter was taken up for consideration, the learned counsel appearing for both sides submitted that subsequent to the order passed by the Tribunal, which is impugned herein, a miscellaneous petition in M.P.No.108/Mds/2013 was filed by the assessee stating that the Tribunal has omitted to consider ground Nos.3(i) & (j) relating to the addition of Rs.18 crores; after hearing the parties, the Tribunal by order dated 17.10.2014 recalled its order dated 14.12.2012 only to the limited extent of disposing the ground No.3(i) and dismissing the ground No.3(j) raised by the assessee; and aggrieved against the said order dated 17.10.2014, the assessee preferred an appeal in TCA.No.117 of 2015 before this Court. Thus, according to the learned counsel, nothing survives for adjudication herein.

4.In view of the above, this tax case appeal is dismissed as having become infructuous. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer, Ward - I(4),
Tirupur

2.The Income Tax Appellate Tribunal,
B Bench, Chennai

3.The Commissioner of Income-tax (Appeals) -II,
Coimbatore.

+1cc to Mr.M.Swaminathan, Advocate SR.No.20841

+1cc to Mr.G.Baskar, Advocate SR.No.21143

T.C.A No. 47 of 2013

NR(CO)
GMY(27/04/2022)