IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.10591 of 2021
and
W.M.P.Nos.11205, 11207 of 2021

Balamukanda Das ... Petitioner

v.

1.The Chief Commissioner of Income Tax,
New Block, Room No.701, 7th Floor,
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

2.The Principal Commissioner of Income Tax,
Chennai 1,
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

3.The Deputy Commissioner of Income Tax,
Non Corporate Circle – 7(1),
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

4.The Assistant Commissioner of Income Tax,
Non Corporate Circle – 7(1)
Income Tax Department,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the writ petitioner/assessee on the file of the 1st respondent for the assessment year 2012-13 and quash the impugned order dated 30.03.2021 in PAN:AAFPB7992M/DIN & Letter No.ITBA/COM/F/17/2020-21/1031950726(1) pertaining to the assessment year 2012-13 with a direction to accept the return of income filed originally incorporating the computation of long term capital gains including the claim of deduction / tax exemption under Section 54/54F of the Income Tax Act, 1961.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.D.Prabhu Mukunth

ORDER

The writ petition is filed challenging the order under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as "IT Act") wherein the claim of tax from capital gains tax in respect of his share of the property has been rejected on the premise that the property belong to M/s Hotel Dasaprakash wherein the petitioner was partner and thus the tax would have to reckoned by treating the transaction as short term capital gains in the hands of the petitioner.

2. It is the submission of the learned counsel for the petitioner that the impugned order suffers from error apparent inasmuch as it is overlooks the fact that Hotel Dasaprakash was dissolved as early as on 15.01.1968. The entire order proceeds on the erroneous assumption that the firm viz., Hotel Dasaprakash continued to exist and has proceeded to treat transaction as attracting short term capital gains in the hands of the petitioner assuming that the dissolution took place only after the sale of the property in question.

3. It is submitted by the learned counsel for the respondent by placing reliance upon the order dated 29.03.2022 passed by the very same authority wherein while making revision under Section 264 of the Act on one of the erstwhile partners, it was recorded that Hotel Dasaprakash was dissolved on 15.01.1968.

4. It is submitted by the learned Senior Standing Counsel for the Income Tax that the above aspect was not brought to the notice of the respondent. The above

aspect would have a bearing on the claim of the petitioner. In the circumstances, this Court is inclined to remit the matter back to the respondent authority to re-do the proceeding after examining the case of the petitioner as to whether Hotel Dasaprakash was dissolved on 15.01.1968 and thereafter proceed to pass orders in accordance with law after affording the petitioner reasonable opportunity. It is open to the petitioner to place material in support of his contentions including the order dated 29.03.2022 and the same shall be taken into account, considered and orders shall be passed in accordance with law within a period of 2 months from the date of receipt of a copy of this order.

5. In view of the above, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

01.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
shk

To

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MOHAMMED SHAFFIQ,J.
shk

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