IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.3237 of 2024
and W.M.P.Nos.3505 & 3506 of 2024

Mettupalayam Ramamoorthi Rathindran,
3/570, Gandhi Nagar, K.Vadamadurai,
Coimbatore 641 017. ... Petitioner

-vs-

1.The Principal Commissioner of Income Tax,
Race Course Road, Coimbatore - 1.

2.The Assessment Unit,
Income Tax Department, New Delhi.

3.The Income Tax Officer,
Non-Corporate Ward 3(3),
Coimbatore - 1. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the case in DIN & Order

No.ITBA/REV/F/REV7/2023-24/1055975557(1) dated 12.09.2023 for the Assessment Year 2021-22 on the file of the first respondent and quash the same and direct the first respondent to consider the actual sale consideration received by the petitioner while computing the long term capital gains.

For Petitioner : M/s.Subbaraya Aiyar Padmanabhan, Ramamani

For Respondents : Mrs.S.Premalatha, Jr. SC

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ORDER

The petitioner assails an order issued in revision proceedings under Section 264 of the Income Tax Act, 1961 (the Income Tax Act). In financial year 2020-21, the petitioner states that he executed a General Power of Attorney in favour of Mr.Sunil Kumar Nahata empowering the agent to take necessary action in relation to the sale of 4.62 acres at Vadavalli Village, Coimbatore District. Based on such authority, the agent executed a sale deed in favour of Daison Land and Development Private Limited, Coimbatore for a total sale consideration of Rs.4,00,00,000/-. According to the petitioner, out of the sale consideration of Rs.4,00,00,000/-, Rs.3,60,00,000/- was received by the petitioner and Rs.37,00,000/- was received by the agent as consideration for performing duties under the contract of agency.

2. Upon the return of income being filed by the petitioner declaring a total income of Rs.38,50,000/- and claiming deduction under Section 54 F of the Income Tax Act with regard to the long term capital gains arising on the sale of immovable property, the return was selected for scrutiny. An assessment order came to be issued thereafter on 22.12.2022 and long term capital gains was computed. In respect of said assessment order, the petitioner filed

the revision petition under Section 264 of the Income Tax Act. Since such petition was rejected, the present writ petition was filed.

3. Learned counsel for the petitioner assails the revision order on two grounds. The first ground is that the petitioner received only a sum of Rs.3,60,00,000/- and that the agreement between the petitioner and the agent is reflected in the receipt executed by them in June 2020. The second ground is that Section 48 of the Income Tax Act permits an assessee to claim a deduction in respect of expenditure incurred wholly and exclusively in connection with the transfer of the property concerned. In terms thereof, learned counsel contends that the petitioner was entitled to a deduction. In spite of raising this contention in the petition under Section 264, learned counsel submits that such contention was disregarded while issuing the impugned order.

4. Mrs.S.Premalatha, learned junior standing counsel, accepts notice on behalf of the respondents. She submits that the sale deed discloses the consideration of Rs.4,00,00,000/- and that the execution of an agreement, in the form of a receipt, by and between the petitioner and his agent does not shift the tax burden to such agent. She also submits that the impugned order does not warrant interference because the contentions of the petitioner were noticed in such order and it was concluded that the findings of the faceless assessment officer did not contain any infirmity.

5. The first ground on which the petitioner assails the impugned order is that he received only Rs.3,60,00,000/- as consideration for the sale of the relevant immovable property. On perusal of the sale deed, it appears that the entire sale consideration was paid to the agent acting for and on behalf of the petitioner / principal. Therefore, capital gains would have to be calculated based

on such total sale consideration. The second contention raised by the petitioner is that he is entitled to claim a deduction in respect of expenditure incurred wholly or exclusively in connection with the sale of property. This contention is contained in the revision petition. On examining the impugned order, particularly paragraph 4 thereof, which is the operative part, I find that the officer has not dealt with this contention and recorded reasons for rejecting the same. For such reason, the impugned order calls for interference.

6. Therefore, the impugned order is quashed insofar as it relates to the computation of capital gains on the sale of the relevant immovable property and the matter is remanded for re-consideration. After providing a reasonable opportunity to the petitioner, including a personal hearing, the first respondent is directed to issue a fresh order on the above issue within a maximum period of ***three months*** from the date of receipt of a copy of this order.

7. W.P.No.3237 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.PNos.3505 and 3506 of 2024 are closed.

14.02.2024

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Index : Yes / No Internet : Yes / No
Neutral Citation: Yes / No

To

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SENTHILKUMAR RAMAMOORTHY,J

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