IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.Nos. 345 & 346 of 2011

Commissioner of Income Tax I,
Chennai. .. Appellant in both TCAs

vs

Essor Hotels Pvt Ltd.,
No.34, Flat No.1,
Radha Vihar, McNichols Road,
Chetpet, Chennai – 600 031. .. Respondent in both TCAs

Prayer in TCA No. 345 of 2011: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench dated 10.02.2011 in ITA No. 1243/Mds/2010.

Prayer in TCA No. 346 of 2011: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'D' Bench dated 10.02.2011 in ITA No. 1336/Mds/2010.

For Appellant : Mr.Avinash Krishnan Ravi
Junior Standing Counsel
(in both TCAs)

For Respondent : No such person (notice not ready)
(in both TCAs)

COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

These two appeals relates to assessment years 2005 – 06 and have been filed by the Income-Tax Department challenging an order of the Income-Tax Appellate Tribunal dated 10.02.2011 and cross-appeals filed by the assessee and the Department.

2. The substantial question of law that arises for consideration is as follows:-

> *"Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in directing the assessing officer to adopt the value of the property sold by the assessee as on 01.04.1981 taking the revaluation figure of Rs.88,41,695/- as on 31.03.1985 and accordingly arrive at the market value as on 01.04.1981 by backward indexation adopting the cost inflation index for the relevant years without considering the guideline value fixed for stamp duty purposes and without any relevant material to substantiate the revaluation done as on 31.03.1985?"*

3. We have heard Mr.Avinash Krishnan Ravi, learned Junior Standing Counsel for the Income-Tax Department. Notice was directed to be taken on the assessee and the same has been returned with the endorsement 'no such entity'.

4. We find that the issue raised, as to the applicability of Section 50C of the Act, as amended with effect from 01.10.2009, has

been decided in *Commissioner of Income Tax v R.Sugantha Ravindran* [352 ITR 488].The operative portion of that order is as follows:-

> *5.The issue involved in this case is as to whether the assessing officer is entitled to take the value of the property assessable by the authority of the State Government for the purpose of payment of stamp duty in respect of said transfer or not. Admittedly, in this case, no registration of sale deed had taken place. It is the case of the Revenue that only in pursuance of the agreement of sale, the assessee had transferred the property and received the sale consideration. In such circumstances, whether Section 50C of the Act would be made applicable even in respect of cases where the registration had not taken place, is the only issue to be decided in this case.*
>
> *6.Learned counsel for the assessee placed a circular in Circular No.5/2010/(F.No.142/13/2010-SO(TPL)) dated 03.06.2010 issued by the Board and submitted that as per the circular, it is made clear that the amendment made by the Finance (No.2) Act, 2009 is only prospective in nature and cannot be applied retrospectively.*
>
> *7.We have perused the above circular. It is stated therein that the scope of the provisions does not include transaction which are not registered with stamp duty valuation authority and executed through agreement to sell or power of attorney. Consequently, it is made clear therein that the amendments have been made applicable with effect from 01.10.2009 and therefore, they will apply only in relation to transaction undertaken on or after such date. The relevant portion of the circular is extracted hereunder:*
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> *"23.4. Applicability:- These amendments have been made applicable with effect from 1st October, 2009 and will accordingly, apply in relation to transactions undertaken on or after such date."*
>
> *8.Learned counsel for the Revenue is not disputing about the existence of such circular issued by the Board. If the Board has issued a circular clarifying the applicability of Section 50C pursuance of the amendment made by Amendment Act 2 of 2009,*

we fail to understand as to how the Revenue can canvass the same issue in this case which in effect is against the circular issued by the Board. Certainly, the Revenue is bound by the circular issued by the Board. At this juncture, it is pertinent to note that in a decision made in the case of State of Tamil Nadu and another Vs. India Cements Ltd. and another reported in (2011) 40 VST 225 (SC), the Honourable Supreme Court has held that the circulars issued by the Revenue are binding on the Department and therefore, they cannot repudiate that they are inconsistent with the statutory provisions. Relevant paragraphs 21 and 22 are extracted hereunder:

"21.It is manifest from the highlighted portion of the circular that as per the clarification issued by the Commissioner of Commercial Taxes, in exercise of the power conferred on him under Section 28A of the TNGST Act, the benefit of the sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier, as is pleaded on behalf of the first respondent. It is trite law that circulars issued by the Revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law.

22.In Paper Products Ltd. Vs. Commissioner of Central Excise ((2001) 247 ITR 128 SC: (1999) 7 SCC 84), while interpreting Section 37B of the Central Excise Act, 1944, which is in pari materia with Section 28A of the TNGST Act, this Court had held that the circulars issued by the Central Board of Excise and Customs are binding on the Department and the Department is precluded from challenging the correctness of the said circulars, even on the ground of the same being inconsistent with the statutory provision. It was further held that the Department is precluded from the right to file an appeal against the correctness of the binding nature of the circulars and the Department's action has to be consistent with the circular which is in force at the relevant point of time."

9.Even otherwise, we are of the firm view that the insertion of words "or assessable" by amending Section 50C with effect from 01.10.2009 is neither a clarification nor an explanation to the already existing provision and it is only an inclusion of new class of transactions namely the transfers of properties without or before registration. Before introducing the said amendment, only the transfers of properties where the value adopted or assessed by the stamp valuation authority were subjected to Section 50C application. However after introduction of the words "or assessable" after the words "adopted or assessed", such transfers where the value assessable by the stamp valuation authority are also brought into the ambit of Section 50C. Thus such introduction of new set of class of transfer would certainly have the prospective application only and not otherwise. Hence the assessee's transfer admittedly made earlier to such amendment cannot be brought under Section 50C.Applying the above said decision of the Honourable Apex Court to the facts and circumstances of the case as well as by considering the scope of Section 50C, we hold that the Revenue is not entitled to canvass the correctness of the order passed by the Tribunal, more particularly in the light of the circular issued by the Board. Accordingly, the Tax Appeal is dismissed and the substantial question of law is answered against the Revenue. No costs."

5. In light of the decision of this Court as above, the substantial question of law raised is decided against the Revenue and in favour of the assessee.

6. These tax case appeals are dismissed. No costs.

[A.S.M., J] [G.A.M., J]
20.11.2024

Index:Yes/No
Neutral Citation:Yes
ssm

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and
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