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TCA No.302 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

TCA No.302 of 2012

The Income Tax Officer
Business Ward VI(2)
Chennai.

.. Appellant

Vs.

Bakthavatsalam Gowtham

.. Respondent

Prthe assessment yearer : Appeal under Section 260A of the Income Tax Act
against the order dated 04.05.2012 in ITA No.1614/Mds/2010 on the file of
Income Tax Appellate Tribunal, Madras 'A' Bench.

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.A.S.Sriraman
For Mr.S.Sridhar



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TCA No.302 of 2012

JUDGMENT

(Judgment of the Court was delivered
by the Hon'ble Chief Justice)

The sole grievance of the Revenue is that the Income Tax Appellate Tribunal erred in holding that the capital gains was not taxable in the assessment year 2007-08.

2. Assessee, who is the respondent herein, is an individual and filed a return of income on 07.07.2007 for the assessment year 2007-08 declaring total income of Rs.97,530/-. The Assessing Officer found that the assessee has executed, along with his brother, a sale deed for sale of 9.75 grounds of immovable property during the previous year (i.e. on 29.03.2007) relevant to the assessment year 2007-08, in favour of Ceebros Hotels Private Limited. The value of the property for registration purpose was shown as Rs.23,50,85,500/-.



TCA No.302 of 2012

WEB COPY

3. When this was sought to be assessed, the Assessee claimed that out of the inherited property, 9.75 grounds of land held by him and his brother was given for joint development to Ceebros Hotels Private Limited and that a power of attorney was executed in November, 2003. Apart from the joint development, Assessee, along with his brother, had also sold 6.55 grounds of land to Ceebros Hotels Private Limited and these were admitted as deemed sale in the assessment year 2004-05. It was the Assessee's case that the sale deed executed on 29.03.2007 was only to comply with technical formalities. The Assessing Officer, however, considered that Section 50C of the Income Tax Act, 1961 was applicable and computed the capital gains based on the value adopted for stamp duty. The Assessing Officer considered Rs.11,75,42,750/- being 50% of the capital gains pertaining to the Assessee (as he was a joint owner along with his brother). After reducing capital gains of Rs.2,45,36,429/- offered to tax in the assessment year 2004-05, the Assessing Officer assessed balance capital gains of Rs.9,30,06,237/- and added the same to the returned income. Aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals).



TCA No.302 of 2012

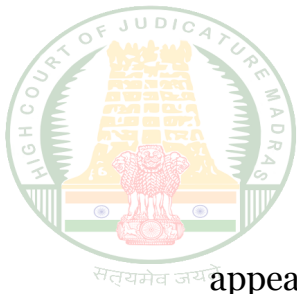
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4. The Commissioner of Income Tax (Appeals) vide an order dated 16.06.2010 allowed the appeal of the Assessee on the consideration that (i) all the conditions stated in Section 53A of the Transfer of Property Act were satisfied in the financial year 2003-04 since the Assessee has received the sale consideration and had given an irrevocable power of attorney in favour of the purchaser in the said period; (ii) Hence, the transfer was completed in the financial year 2003-04 and the capital gains were assessed in the financial year 2003-04; and (iii) the jurisdictional High Court's decision in the case of *D.Kasturi v. Commissioner of Income Tax*¹ and the ratio followed by the Jaipur bench of the Income Tax Appellate Tribunal in the case of *Smt. Vijay Laxmi Dhaddha v. Commissioner of Income Tax*² would apply to the present scenario.

5. Aggrieved, the Revenue preferred an appeal before Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal dismissed the

1 251 ITR 532

2 20 DTR 365



TCA No.302 of 2012

WEB COPY

appeal of the Revenue on the premise that (i) the Revenue has treated the transaction in respect of the land as a transfer in the assessment year 2004-05 and accordingly, the Revenue cannot treat the transaction with respect to the same asset as a transfer in the assessment year 2007-08 also; (ii) the conditions stipulated in Section 53A of the Transfer of Property Act are satisfied in the present case and accordingly, the asset is to be treated as transferred in the assessment year 2004-05; and (iii) in view of the above, the capital gains with respect to the property cannot be charged in the assessment year 2007-08. It is against this order of Income Tax Appellate Tribunal that was pronounced on 04.05.2012 that this appeal is preferred.

6. On 17.10.2012, the following five questions of law were framed:

“1. Whether in the facts and circumstance of the case, the Income Tax Appellate Tribunal was right in holding that the transfer of property took place in the previous years relevant to the the AY 2004-05 in pursuance of the agreement dated 20.11.2003?

2. Whether in the facts and circumstance of the case, the Tribunal is right in holding that parting possession immovable property has taken place in previous year relevant to the assessment year 2004-05 itself, while the conveyance and possession of the land was to be given to M/s. Ceebros Hotels P. Limited only after completion of construction of multi-storeyed commercial complex in the portion of land retained by the



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assessee?

3. Whether in the facts and circumstance of the case, the Tribunal was right in relying upon the agreement dated 20.11.2003, while both the contracting parties failed to carry out the mandatory part performance of the contract for it to be treated as transfer and that M/s.Ceebros Hotels P Limited purchased the property for its own use?

4. Whether in the facts and circumstance of the case, whether the Tribunal is right in not holding that the transfer it at all had taken place, it was only in respect of 6.5 grounds and not in respect of 9.75 grounds? and

5. Whether the Tribunal is right in not considering the grounds put forth by the Revenue that the assessee and his brother are joint owners of the property and it was not lawful on the part of the assessee not to admit the capital gain on outright sale of 6.5 grounds in the year 2004-05 and that the same was totally offered only in hand of his brother?

7. The facts are that the Assessee, along with this brother one Vijay, owned 27.38 grounds. Before we proceed further, it has to be noted that in Vijay's case also, similar order was passed by the Assessing Officer, against which, Vijay preferred an application under Section 264 of the Act, which application was allowed by the Commissioner of Income Tax (VII) by an order dated 23.05.2012, the operative part of the order, which is at paragraph 10, reads as under:



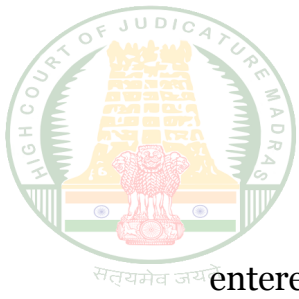
TCA No.302 of 2012

WEB COPY

“I have carefully considered the assessee's submissions. I find that this issue has already come up before me in the petition filed by the very same petitioner for the assessment year 2004-05, wherein I have held that the transfer within the meaning of section 2(47)(v) has taken place in the the assessment year 2004-05 itself and directed the assessment to be made on substantive basis to bring to tax the capital gains arising on the joint development agreement and power of attorney executed in favour of Ceebros Hotels Private Limited. Fortified also with the order of the Hon'ble ITAT in the assessee's brother's case referred to in the above paragraph, who owns 50% share in the very same property. I hold that the action of the Assessing Officer in taxing the same again in this assessment year 2007-08 is erroneous and accordingly I direct the order dated 30.12.2011 passed under Section 143(3) read with Section 148 be cancelled.”

8. We agree with Mr.Sriraman that on this ground alone the present appeal would not survive because this finding in the case of Vijay has not been challenged by the Revenue and it has attained finality.

9. Nevertheless, the facts are that the Assessee and his brother had inherited 27.38 grounds having equal share. The Assessee and his brother



TCA No.302 of 2012

WEB COPY

entered into an agreement with Ceebros Hotels Private Limited, whereby, land measuring 6.5 grounds was outrightly sold to Ceebros Hotels Private Limited for Rs.4,22,50,000/- and 9.75 grounds of land was valued at Rs.6,33,75,000/-. Therefore, the sale was for total of 16.25 grounds. The Assessee and his brother retained 11.13 grounds.

10. The consideration of Rs.4,22,50,000/- was paid during financial year 2003-04 relevant to the assessment year 2004-05. As regards the consideration of Rs.6,33,75,000/-, Ceebros Hotels Private Limited agreed to construct 64350 square feet of commercial complex on 11.13 grounds that was left with the Assessee and his brother. Therefore, out of the total consideration of Rs.10,56,25,000/-, the Assessee's share being 50% thereof amounting to Rs.5,28,12,500/-, the Assessee received partly in cash and partly by way of constructed area. The sale deed, however, was registered only in the financial year 2006-07, after Ceebros Hotels Private Limited completed the construction of 64350 square feet of commercial complex.

11. As the registration happened only in 2006-07, stamp duty was



TCA No.302 of 2012

WEB COPY

paid on the ready reckoner value prescribed by the authority, which was Rs.23,50,85,000/-. But the Assessee had already offered capital gains in the assessment year 2004-05 which was duly assessed by the Assessing Officer under Section 143(3) and as noted earlier, capital gains had already been paid. The Assessing Officer, however, observed that the stamp duty was paid on the value of Rs.23,50,85,500/- in 2006-07 and brought to tax the difference between the stamp duty and the capital gains assessed in the assessment year 2004-05 to tax in the assessment year 2007-08. Accordingly, the Assessing Officer assessed the capital gains of Rs.9,30,06,321/- during the year under appeal, namely the assessment year 2007-08.

12. Shri. Ravikumar submitted that the agreement to sell in the financial year 2003-04 was not registered and therefore, the transfer of property in the financial year 2003-04 was not correct and that the transfer of property took place in the assessment year 2006-07 when sale deed was registered. He also submitted that possession was also handed over only in the assessment year 2006-07 and not in the assessment year 2003-04 and



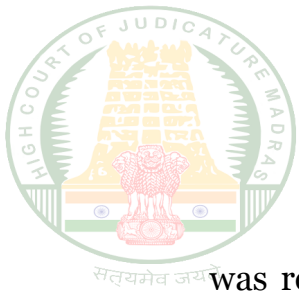
TCA No.302 of 2012

WEB COPY

therefore, the Income Tax Appellate Tribunal and Commissioner of Income Tax (Appeals) were wrong in rejecting the stand taken by the Assessing Officer in the assessment order.

13. Shri. Sriraman submitted that the department had accepted the transfer in the assessment year 2004-05 and also levied tax thereon and it is not open today to again tax the same property in the assessment year 2007-08. If Mr.Ravikumar's submission is to be accepted that the agreement was not registered, then the Assessing Officer should not have levied tax accepting the transfer in the assessment year 2004-05.

14. Shri. Sriraman also pointed out that a registered power of attorney was executed in favour of Ceebros Hotels Private Limited in the assessment year 2004-05 and simply because of a technical requirement of registration, at the request of Ceebros Hotels Private Limited, the Assessee again signed the sale deed and at that time, no consideration whatsoever



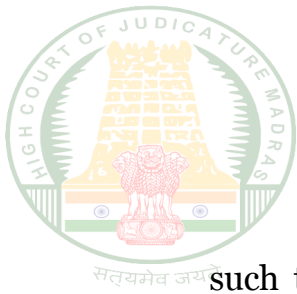
TCA No.302 of 2012

WEB COPY

was received by the Assessee. It was only an action in aid of the sale that was completed in the assessment year 2004-05. He also submitted, in any event, Assessing Officer has not allowed any deduction for the indexed cost of the property, etc.

15. Admittedly, the Assessing Officer having accepted the transfer in the assessment year 2004-05 and levied tax thereon, cannot sing a different tune in the assessment year 2007-08. In the assessment year 2004-05, the property in question was treated as transfer as per the definition of Section 2(47)(v) of the Act in the hands of the Assessee and consequently, capital gains was also assessed in that assessment year. After treating all transfer of the property in the hands of the Assessee as transfer in the assessment year 2004-05, it is not open to the Revenue to again treat the same property as transfer by the same Assessee in the assessment year 2007-08 also.

16. Shri. Ravikumar submitted that under Section 50C of the Act, if the consideration received is less than the value adopted by the same valuation authority for the purpose of payment of stamp duty in respect of



TCA No.302 of 2012

WEB COPY

such transfer, the value adopted shall be deemed to be the full value of consideration received as a result of such transfer and stamp duty payable.

The Section says “all such transfer”. The transfer admittedly happened in the assessment year 2004-05 and the Assessing Officer has accepted the value in the assessment year 2004-05 and has also levied capital gains tax. Therefore, we would agree with the Tribunal that there is no merit in the stand taken by the Assessing Officer and capital gains cannot be assessed in the assessment year 2007-08.

17. All questions are answered accordingly. Appeal is dismissed.

(K.R.SHRIRAM, CJ)

(SUNDER MOHAN,J.)

17.06.2025

Index : Yes
Neutral Citation : Yes

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TCA No.302 of 2012

WEB COPY

To

1. The Assistant Registrar
Income Tax Appellate Tribunal
Chennai Benches, Chennai.
2. The Income Tax Appellate Tribunal
'A' Bench, Chennai.
3. The Commissioner of Income Tax (Appeals) -IX
Chennai.



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TCA No.302 of 2012

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

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TCA No.302 of 2012

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