



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2026

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**THE HON'BLE DR JUSTICE G. JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SHAMIM AHMED**

Tax Case Appeal No. 229 of 2012

Commissioner of Income Tax-IV
Chennai

..Appellant

Vs

Vijaya Productions P Ltd
183, N.S.K. Salai,
Vadapalani,
Chennai-26.

..Respondent

PRAYER: Tax Case (Appeal) is filed under Section 260A of the Income-Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai “A” Bench, dated 25.11.2011 made in ITA No.1093/Mds/2010 for the Assessment Year 2007-08.

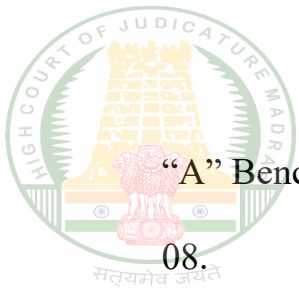
For Appellant: Mr.S.Sathiyarayanan
Senior Standing Counsel

For Respondent: Mr.R.V.Easwar, Senior Counsel
for Mr.G.Baskar

JUDGMENT

(Judgment of the Court was delivered by Dr.G.Jayachandran J.)

The appellant, the Commissioner of Income Tax, Chennai, is aggrieved by the order dated 25.11.2011 passed by the Income Tax Appellate Tribunal,



“A” Bench, Chennai, in ITA.No.1093/Mds/2010 for the Assessment Year 2007-

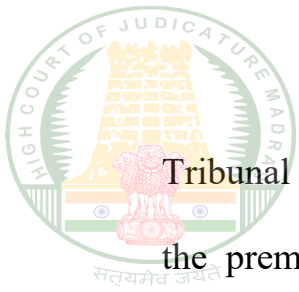
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2. The appellant submitted that the order of the Tribunal suffers infirmity by not properly appreciating that the transaction involved between the assessee's company and the M/s.Prestige Estates Projects Pvt. Ltd (PEPL). Especially, the finding that the parties executed a Joint Venture Agreement, a Shareholders' Agreement and a General Power of Attorney all executed on the same day (26.05.2006). Subsequently, the respondent transferred the possession to M/s.PEPL, which commenced development activities prior to 31.03.2007.

3. The main contention raised in this case by the Department is that the recitals in the Joint Venture Agreement, read with Section 2(47) of the Income Tax Act, which defines “transfer” in relation to capital assets clearly establish in this case the transfer occurred during the relevant financial year. Specifically, under the terms of the Joint Venture and Share Transfer Agreements, the respondent/assessee accrued a sum of Rs.115 crores as consideration for transferring 50% of its shareholding in favour of the investing company, M/s.PEPL.

4. The learned counsel for the Revenue, emphasizing more on the Explanation (2) to Section 2(47) (vi) of the Income Tax Act, submitted that the



Tribunal ought not to have reversed the findings of the Appellate Authority on the premise that no transfer of shares or consideration occurred during the financial year under consideration. The learned counsel argued that the law clearly fixes tax liability on an assessee who enters into a Joint Venture Agreement for consideration, as such an arrangement enables the contracting party to enjoy the immovable property.

5. At the time of admission, this Court formulated the following substantial questions of law for consideration:

“1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there was no transfer involved in the Joint Venture Agreement entered into by the assessee company with M/s.Prestige Estate Projects P.Ltd.. Dated 26.05.2006 even though the agreement resulted in the relinquishment and or creation of right or interest in favour of the latter within the meaning of Sub-Clauses (v) and (vi) of Section 2(47) of the Income Tax Act?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not drawing the correct inference from the conduct of the parties evidenced by the documents entered into in the form of Development Agreement, Share purchase agreement and irrevocable Power of Attorney in favour of M/s.Prestige Estate Project P.Ltd.?



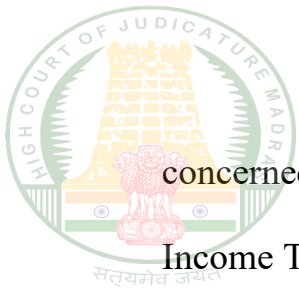
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3. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the entire arrangement constituted or attempt on the part of the assessee which is a closely held company to part with 50% of the rights in the property together with the usufructs thereof in exchange for Rs.115 Crores and such parting of ownership rights was accompanied by not registering 50% of the property to the transferee but by giving 50% stakes in the company in the form of allotment of shares at a premium.? ”*

6. Reiterating the content in the grounds of appeal and the relevant provisions of Income Tax Act, namely Section 2(47)(vi) read with Explanation (2), the charging provision under Section 45 and the mode of computation of income envisaged under Section 48, the learned counsel for the Department submitted that the assessee company cannot wriggle out of its liability to pay tax for the Assessment Year 2007-08 in respect of the capital gains arising from the transfer of the immovable property.

7. Per contra, the learned Senior Counsel appearing for the respondent submitted that the issue raised by the department is no longer *res integra* in view of the judgment rendered in ***Commissioner of Income Tax Vs. Balbir Singh Maini, [(2017) 86 taxmann.com(SC)]***, wherein it was held that a hypothetical agreement which was not given effect by either side during the



concerned financial year will not fall within the purview of Section 2(47) of the Income Tax Act.

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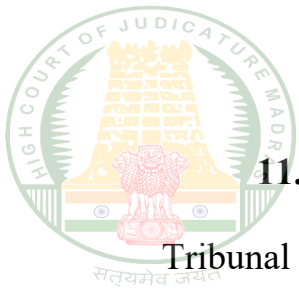
8. The learned Senior Counsel further submitted that no transfer of shares or consideration was effected on the strength of the Joint Venture Agreement or Shareholders' Agreement dated 25.06.2006 till the end of the financial year (i.e.) 31.03.2007. While so, based on an unregistered Joint Venture Agreement is not enforceable in law for the purpose of transfer, taxed levied. As per terms of agreement transfer of shares must follow the statutory procedures contemplated under the relevant statutes, which were not even commenced during the concerned financial year. Consequently, there was no accrual of actual or deemed income during the concerned financial year. Therefore, the transaction cannot be viewed as a contract of "transfer" of capital asset.

9. The learned Senior Counsel also submitted that the findings of the Assessing Officer and the Appellate Authority claiming that possession of the property was transferred to M/s.PEPL and construction had commenced before 31.03.2007 is baseless and contrary to the material evidence. Evidence placed before the CIT (A) will prove that the transfer of possession and development activities could have commenced only after obtaining mandatory clearances, such as Environmental Clearance and NOCs. In this case, the Environmental



Clearance from the Ministry of Environment and Forests obtained on 12.06.2007; NOC from the Fire and Rescue Services Department obtained on 10.12.2009; NOC from BSNL was obtained on 11.06.2007 and the NOC from Airports Authority of India was obtained on 09.11.2007. All these certificates which are pre request to commence the project were obtained only after 31.03.2007.

10. The learned Senior Counsel for the respondent, to impress upon this Court, submitted that in the absence of mandatory environmental and statutory clearance from the respective departments, the developer (PEPL) could not have commenced any development activities on the subject land. That apart, no prudent person would part with the possession of property without the receipt of consideration, whether in whole or in part. In this case, there was not even a nominal transfer of consideration from PEPL to the respondent/assessee during the concerned financial year; therefore, the essential ingredients of a 'transfer' as defined under Section 2(47) remain unsatisfied. The Appellate Authority held in favour of the Revenue based on the misapplication of law and due to misunderstanding of the facts. Subsequently, when the matter reached the Tribunal, conflicting opinion arose between the two members. Following the split, the matter was referred to the third Member, who elaborately discussed the issues and held in favour of the assessee.



11. We had the privilege of reading of the orders of the members of the Tribunal as well as the judgment of the Hon'ble Supreme Court in ***Commissioner of Income Tax Vs. Balbir Singh Maini***. The following paragraphs from that judgment provide quietus to the issue under consideration.

Hence, they are extracted below:-

“20. The effect of the aforesaid amendment is that, on and after the commencement of the Amendment Act of 2001, if an agreement, like the JDA in the present case, is not registered, then it shall have no effect in law for the purposes of Section 53-A. In short, there is no agreement in the eye of the law which can be enforced under Section 53-A of the Transfer of Property Act. This being the case, we are of the view that the High Court was right in stating that in order to qualify as a “transfer” of a capital asset under Section 2(47)(v) of the Act, there must be a “contract” which can be enforced in law under Section 53-A of the Transfer of Property Act. A reading of Section 17(1-A) and Section 49 of the Registration Act shows that in the eye of the law, there is no contract which can be taken cognizance of, for the purpose specified in Section 53-A. ITAT was not correct in referring to the expression “of the nature referred to in Section 53-A” in Section 2(47)(v) in order to arrive at the opposite conclusion. This expression was used by the legislature ever since sub-clause (v) was inserted by the Finance Act of 1987 w.e.f. 1-4-1988. All that is meant by this expression is to refer to the ingredients of applicability of Section 53-A to the contracts mentioned therein. It is only



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where the contract contains all the six features mentioned in *Shrimant Shamrao Suryavanshi [Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi, (2002) 3 SCC 676 : 2002 SCC (Cri) 469]*, that the section applies, and this is what is meant by the expression “of the nature referred to in Section 53-A”. This expression cannot be stretched to refer to an amendment that was made years later in 2001, so as to then say that though registration of a contract is required by the Amendment Act of 2001, yet the aforesaid expression “of the nature referred to in Section 53-A” would somehow refer only to the nature of contract mentioned in Section 53-A, which would then in turn not require registration. As has been stated above, there is no contract in the eye of the law in force under Section 53-A after 2001 unless the said contract is registered. This being the case, and it being clear that the said JDA was never registered, since the JDA has no efficacy in the eye of the law, obviously no “transfer” can be said to have taken place under the aforesaid document. Since we are deciding this case on this legal ground, it is unnecessary for us to go into the other questions decided by the High Court, namely, whether under the JDA possession was or was not taken; whether only a licence was granted to develop the property; and whether the developers were or were not ready and willing to carry out their part of the bargain. Since we are of the view that sub-clause (v) of Section 2(47) of the Act is not attracted on the facts of this case, we need not go into any other factual question.



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22. *The object of Section 2(47)(vi) appears to be to bring within the tax net a de facto transfer of any immovable property. The expression “enabling the enjoyment of” takes colour from the earlier expression “transferring”, so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof. [The maxim “noscitur a sociis” has been repeatedly applied by this Court. A recent application of the maxim is contained in Coastal Paper Ltd. v. CCE, (2015) 10 SCC 664 at p. 677, para 25. This maxim is best explained as birds of a feather flocking together. The maxim only means that a word is to be judged by the company it keeps.] The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.*

27. *In the facts of the present case, it is clear that the income from capital gain on a transaction which never materialised is, at best, a hypothetical income. It is admitted that for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act.*

28. *In the present case, the assessee did not acquire any right to receive income, inasmuch as such alleged right was dependent upon the necessary permissions being obtained. This being the case, in the circumstances, there*



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was no debt owed to the assesseees by the developers and therefore, the assesseees have not acquired any right to receive income under the JDA. This being so, no profits or gains “arose” from the transfer of a capital asset so as to attract Sections 45 and 48 of the Income Tax Act.”

12. Regarding the charging Section, the Hon’ble Supreme Court in ***CIT Vs. B.C.Srinivasa Setty [1981] 128 ITR 294 (SC)*** laid down the principle that the charging section and the computation provisions together constitute an integrated code. It is pertinent to extract the relevant portion to better understanding that in the case in hand for the assessment year 2006-07 no taxable liability had accrued to the assessee.

“8.Section 45 charges the profits or gains arising from the transfer of a capital asset to income-tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings section 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other section of the head “Capital gains”. Section 45 is a charging section. For the purpose of imposing the charge, Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded

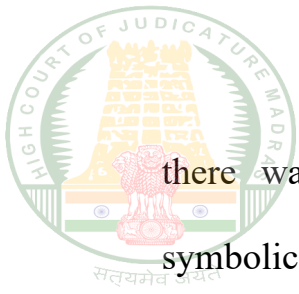


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as never intended by section 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income-tax Act, whereunder each head of income the charging provision is accompanied by a set of provisions for computing the income subject of that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evidence that such a case was not intended to fall within the charging section, there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrity of the statutory scheme provided for each head.”

13. It is obvious that when the unregistered Joint Venture Agreement and the agreement to transfer shares remained only on paper till 31.03.2007 and



there was no movement of consideration or transfer of property, either symbolically or constructively, the provisions of Section 45 do not come into play and as a consequence, the computation provisions under Section 48 also cannot be invoked.

14. In our view, the Assessing Officer as well as the Appellate Authority had acted prematurely in the case of the respondent. They ought to have waited till the Joint Venture Agreement and the Share Transfer Agreement were actually implemented. There is no evidence to show that the Joint Venture Agreement or the General Power of Attorney, which are significant to this matter was given effect before 31.03.2007. Since NOCs and clearance certificates were obtained only after 31.03.2007, we hold that the Joint Venture Agreement as well as the Share Transfer Agreement been acted upon only after 31.03.2007, hence, assessment of tax based on the “deemed accrued income” for the financial year 2006-07 is legally unsustainable.

15. Hence, this Tax Case (Appeal) stands dismissed. No costs.

(G.J.,J.) (S.S.A.,J.)
27-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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DR.G.JAYACHANDRAN J.
and
SHAMIM AHMED J.

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