

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

**The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP**

T.C.A.No.497 of 2013

Commissioner of Income Tax,
Coimbatore.

.. Appellant

-vs-

Mr.John Ettimootil Samuel,
202, Rathna Mount Enclave,
Race Course Road,
Coimbatore-641 018.
PAN: ALMPS6292b

.. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 26.11.2012 made in I.T.A.No.1703(Mds)/2012 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai for the assessment year 2005-06.

For Appellant : Ms.K.G.Usha Rani,
Standing Counsel

For Respondent : No appearance

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order dated 26.11.2012 made in I.T.A.No.1703(Mds)/2012 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai (for brevity “the Tribunal”) for the assessment year 2005-06.

2.The appeal was admitted on 29.08.2013, on the following substantial questions of law:-

“1.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the assessment made under Section 147? and

2.Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there was no failure on the part of the assessee to disclose fully and truly the details and particulars necessary for completing the assessment under Section 143(3)?”

3.Heard Ms.K.G.Usha Rani, learned Standing Counsel for the appellant/Revenue.

4.Though the respondent/assessee has been served and his name is printed in the cause list, none appears for the assessee.

5.The assessment for the year under consideration, viz., 2005-06 was completed by order dated 28.12.2007, under Section 143(3) of the Act. The assessment was subsequently reopened under Section 147 and notice under Section 148 of the Act was issued. The Assessing Officer stated that for the subject assessment year, long term capital gain of Rs.1,62,74,689/- was computed by taking sale consideration of Rs.1,74,00,000/- and from the copy of the Sale Deed, it is seen that the Registering Authority has charged compounding fee on the document of Rs.89,000/- under Section 70(2) of the Indian Stamp Act, which is inclusive of 8% stamp duty and 1% registration fee. Therefore, the sale consideration to be adopted, as per Section 50C of the Act for computation of capital gain, should be Rs.1,83,89,000/- and the increase of capital gain of Rs.9,89,000/- should accordingly be brought to tax.

6.The assessee submitted their explanation dated 08.11.2011, explaining that the said amount is not a determination of the market value under Section 47A of the Indian Stamp Act, but it is only compounding fee levied under Section 70(2) of the Indian Stamp Act. This compounding fee has been levied for not mentioning the correct built-up area of the existing structure in the document, upon inspection of the property and not because of under-valuation of the property transferred even after taking the correct built-up area. The Assessing Officer did not agree with the assessee and held that the compounding fee is inclusive of 8% stamp duty and 1% registration fee and therefore, it is clear that it pertains to the value of the property and the amount of Rs.1,83,84,367/- deemed to be the full value of consideration under Section 50C of the Act and accordingly, completed the assessment vide order dated 30.11.2011.

7.The assessee, being aggrieved, filed appeal before the Commissioner of Income Tax (Appeals)-I, Coimbatore (for brevity “the CIT(A)”), which was dismissed by order dated 01.06.2012. Before the CIT(A), the assessee questioned the reopening of the assessment, after a

period of four years without any tangible material to establish that the assessee failed to disclose fully and truly all facts. The assessee contended that all the documents with regard to the payment of stamp duty and additional stamp duty have been disclosed before the Assessing Officer and the copy of the Sale Deed has been filed and the dispute with regard to the sale consideration is not open for revision. Furthermore, the assessee contended that the order passed under Section 147 is bad in law, since the matter was not referred for valuation in terms of Section 50C(2) of the Act. The CIT(A), did not agree with the assessee and dismissed the appeal by order dated 01.06.2012. Aggrieved by the same, the assessee preferred appeal before the Tribunal.

8.The Tribunal, in our view, rightly took note of the fact that the reopening of the assessment was after years and there was no tangible material to establish that the assessee failed to disclose fully and truly all materials, which are required for the assessment at the first instance. Furthermore, the Tribunal took note of the fact that the assessee has furnished all necessary details required for completing the assessment

including the photostat copies of the Sale Deed. Further, the Tribunal observed that the original Sale Deed will always be with the buyer of the property and the assessee will have only a certified copy and the Assessing Officer did not insist upon production of the original Sale Deed while completing the assessment under Section 143(3) of the Act. Therefore, it was held that there was no case for reopening the assessment.

9. In our considered view, the Tribunal was fully justified in holding that the reopening of the assessment could not have been made in the facts and circumstances of the case and we find no question of law, much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal stands dismissed. No costs.

(T.S.S., J.) (S.S.K., J.)
03.08.2021

Index: Yes/ No
Speaking Order : Yes/ No
abr

To

The Income Tax Appellate Tribunal 'D' Bench, Chennai.

T.S.Sivagnanam, J.
and
Sathi Kumar Sukumara Kurup, J.

(abr)



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