

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2013

Coram

THE HONOURABLE MRS.JUSTICE R.BANUMATHI
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (A) No. 21 of 2010

The Commissioner of Income Tax T I,
Coimbatore. .. Appellant

Vs.

R.Sugantha Ravindran .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, 'A' Bench,
Chennai dated 22.07.2009 passed in I.T.A. No. 2145/Mds/2006.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.R.Kumar
for Mr.T.N.Seetharaman

JUDGMENT

K. Ravichandrabaabu, J.

The Revenue is on appeal in respect of the assessment year 2005-2006.
The following is the substantial question of law that arise for
consideration of this Court in this appeal:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the provisions of Section 50C can be invoked in the case where the sale of the property has not been registered, even though the assessing officer computed the long term capital gains, adopting the guideline value as the sale consideration, instead of the consideration admitted by the assessee?"

2. The assessee is an individual and filed her return of income for the assessment year 2005-2006 returning the total income of Rs. 98,886/-. The assessee along with the two co-owners transferred a property measuring 23.84 cents in pursuance of an agreement of sale for consideration of Rs. 50 lakhs to a third party. The agreement was not a

registered one. Pursuant to the sale agreement, the physical possession of the property was handed over to the buyer and the assessee also received the sale consideration. The assessee worked out long term capital gain and admitted 1/3rd share therein for tax. The assessing officer referred the matter to the stamp valuation authority in order to find out the value of the property for payment of stamp duty. As the guideline value given by the stamp valuation authority was found to be higher than the consideration as per the agreement of sale, by invoking the provisions of Section 50C of the Income Tax Act, the assessing officer computed the long term capital gain by adopting the guideline value as the sale consideration instead of the consideration admitted by the assessee. As against the same, the assessee went on appeal before the Commissioner (Appeals). The first appellate authority allowed the appeal by holding that Section 50C of the Income Tax Act can be invoked only when the property was transferred by way of registered sale deed and assessed for stamp valuation purposes. The further appeal preferred by the Revenue before the Tribunal was dismissed by holding that Section 50C could not be invoked as the property was not transferred by way of registered sale deed. Both the appellate authorities relied on the decision of the Tribunal at Jodhpur in the case of Navneet Kumar Thakkar v. ITO [2008] 110 ITD 525. Aggrieved against the same, the present appeal is preferred by the Revenue.

3. Learned counsel for the Revenue submitted that Section 50C is applicable to the case of the assessee and he further submitted that the word "asses sable" introduced by way of Finance (No.2) Act, 2009, though with effect from 01.10.2009, has to be treated as applicable even in the case of assessee as the intention of the legislation is to bring all the transactions where the registration of sale has not taken place also.

4. Per contra, learned counsel for the assessee submitted that when the word "asses sable" was inserted by the Finance (No. 2) Act, 2009, that too, with effect from 01.10.2009, cannot be applied retrospectively and therefore, Section 50C can be made applicable only in the case where the registration of the sale deed had taken place and not otherwise.

5. Heard the learned counsel on either side.

6. The issue involved in this case is as to whether the assessing officer is entitled to take the value of the property asses sable 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.

7. 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.

8. 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 here-under:

"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."

9. 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 in 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 v. India Cements Ltd. [2011] 40 VST 225 (SC), the Honorable 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 here under:

"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 rigor of the law.

22. In Paper Products Ltd. v. 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."

10. Even otherwise, we are of the firm view that the insertion of words "or asses sable" 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 asses sable" after the words "adopted or assessed", such transfers where the value asses sable 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.

11. Applying the above said decision of the Honorable 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 Case Appeal is dismissed and the substantial question of law is answered against the Revenue. No costs.

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To

1. The Commissioner of Income Tax (Appeals) T I,
Coimbatore.
2. The Income Tax Officer,
Ward III(2),
Coimbatore.
3. The Income Tax Appellate Tribunal,
Chennai Bench 'A',
Chennai