

(2002) 11 MAD CK 0160

Madras High Court

Case No: Tax Case (Reference) No"s. 48 and 88 of 1999 13 November 2002

Commissioner of Income Tax APPELLANT

vs

Amalgamations Ltd. RESPONDENT

Date of Decision: Nov. 13, 2002

Citation: (2003) 127 TAXMAN 184

Hon'ble Judges: N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench: Full Bench

Advocate: Mrs. Pushya Sitharaman for the Revenue J. Narayanasamy, for the Assessee, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

N.V. Balasubramanian, I.

In compliance with the directions of this Court, the Income Tax Appellate Tribunal has stated the case and referred the following common question of law in relation to the assessment years 1988-89 and 1989-90 of the assessee :

Considering the fact that no orders for acquisition of land at No. 13, Sivaswamy Iyer Street had been received by the assessee and that the assessee had acquired exemption from the acquisition proceedings, whether the Tribunal was right in holding that the lands be valued as per compensation receivable under the Urban Land Ceiling and Regulation Act?

2. The assessee is a company in which public are not substantially interested and the question that arises in both the Tax Cases is regarding the correct Principles of valuation to be adopted for valuing the land owned by the respondent-company at 13, Sivaswamy Iyer Street, Chennai. The Wealth Tax Officer valued the land at Rs. 14,26,700. The assessee filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) held that by reason of the operation of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, there will be some depression in the

market value of the property and therefore, reduced the valuation of property by 20 per cent on the ground of depressing effect of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The revenue challenged the order of the Commissioner (Appeals) before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal followed the decision of this court in the case of Commissioner of Wealth-tax, Tamil Nadu-II, Madras Vs. K.S. Ranganatha Mudaliar and Others, and remitted the matter to the Wealth Tax Officer to ascertain the factual position and value the land, which is the subject-matter of acquisition on the basis of the compensation provided under the Land Ceiling Act and the remaining portion of the land, which is allowed to be retained by the assessee, should be valued as per the general principles of valuation. The revenue challenged the order of the Income Tax Appellate Tribunal by filing a reference application. The Tribunal held that no question of law arose out of the order. However, on the basis of the directions of this court, the question referred to earlier has been referred to us for consideration.

3. We heard the learned senior standing counsel for the revenue and the learned counsel appearing for the assessee. We find that the question of law referred to us is not happily framed as we find that the question contains such factual details, which are not found in the order of the Tribunal. The question proceeds on the basis that there was no order of acquisition of the land at No. 13, Sivaswamy Iyer Street, Chennai and the assessee had obtained exemption from the acquisition proceedings. We find from the order of the Tribunal that no such contention was raised by the revenue before the Tribunal and the Tribunal has also not recorded any finding that there was no order of acquisition of land and the assessee had obtained exemption from the acquisition proceedings under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The question is framed on the basis that the assessee had obtained exemption from the acquisition proceedings. Learned counsel for the revenue has fairly stated that there was no such finding by the Appellate Tribunal in its order and we also find that the Tribunal has not recorded any such finding. The Tribunal has directed the assessing officer to ascertain factual position while valuing the land. No doubt, the Tribunal followed the decision of this court in K.S. Ranganatha Mudaliar case (supra), and in that case this court was dealing with the determination of the market value of the land, which was the subject-matter of ceiling under the Tamil Land Reforms (Fixation of Ceiling on Land) Act, 1961. Though the said Act, viz., Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 is not applicable as the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 is applicable, on the terms of order of remand it is for the assessing officer to determine the market value of land and whether the assessee had obtained exemption from the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and whether there was any order of acquisition under the said Act. It is also relevant to notice here that the said Act has since been repealed. All the factual matters should be considered by the Wealth Tax Officer while valuing the land and the question framed as if the Tribunal has recorded such a finding does not arise

out of the order of the Tribunal. Accordingly, we find that the Tribunal merely remitted the matter to the Wealth Tax Officer to determine the valuation of the land after ascertaining the factual position and we do not find any question of law that arises out of the order of the Tribunal. Accordingly, we are not answering the question of law, but however, we make it clear that it is open to the Wealth Tax Officer to ascertain the factual position as directed by the Tribunal and arrive at the valuation of the land in accordance with law. Tax Case Reference is disposed of accordingly. However, in the circumstances, there will be no order as to costs.